

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

76-7387

6/9/76

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

MILLAR ELEVATOR INDUSTRIES, INC.,

Plaintiff-Appellant,

—against—

LOCAL UNION NO. 3, INTERNATIONAL BROTHER-
HOOD OF ELECTRICAL WORKERS, THOMAS
VAN ARSDALE, individually and as Business Manager
of Local 3, JAMES O'HARA, individually as Asst.
Manager of Local 3, JOHN KROMER, individually and
as Business Representative of Local 3, "JOHN DOE",
"JAMES SMITH", and "JANE ROE",

Defendants-Appellees,

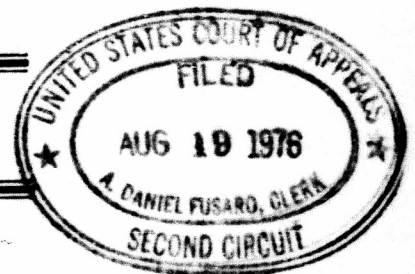
and

LOCAL UNION NO. 1, INTERNATIONAL UNION
OF ELEVATOR CONSTRUCTORS,

Intervenor-Appellee.

APPENDIX

FELLNER AND ROVINS
Attorneys for Plaintiff-Appellant
230 Park Avenue
New York, N. Y. 10017
(212) 686-4500



PAGINATION AS IN ORIGINAL COPY

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REVELANT LIST OF DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
8-5-76		Complaint filed. Summons issued. (1)c
8-5-76		Before PRATT, J. - case called - counsel present - Order to show cause - order signed with T.R.O. ---
8-5-76		BY PRATT, J. - Order to show cause ret. 8-13-76 before J. Weinstein in the US Courthouse in Westbury NY why an order pending final date of this action should not be entered restraining and enjoining defts from engaging in any strike etc. filed with T.R.O. (2)
8-5-76		Bond undertaking injunction (\$3,500.00) filed. (3)
8-5-76		Memorandum in support of plntff's application for temporary restraint order and preliminary injunction filed with supporting affidavit of Yale Citrin.
9-10-76		By PRATT, J.-OTSC ret 8-11-76 why defts should not be punished for contempt of court for violating and disobeying the order of this Court etc filed.
8-12-76		Before WEINSTEIN, J.- Case called for preliminary injunction Hearing ordered and begun Hearing held and concluded Case dismissed
8-12-76		By WEINSTEIN, J.- Order dtd 8-12-76 dismissing the action The Court finds that the dispute is not sufficiently arguable arbitiable to warrant an injunction. The tro is extended to the first motion day of the Court of Appeals, 2nd Cir. so that the parties may seek a stay or other relief file on document #2.
8-16-76		Notice of appeal filed. (8)

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SUMMONS IN A CIVIL ACTION

CIV. 1a (2-64)
(Formerly D. C. Form No. 45a Rev. (6-49))

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

760 1441

CIVIL ACTION FILE NO. ~~76~~ civ.

MILLAR ELEVATOR INDUSTRIES, INC.,

Plaintiff

v.

LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, THOMAS VAN ARSDALE, individually and as Business Manager of Local 3, JAMES O'HARA, individually and as Asst. Business Manager of Local 3, JOHN KROMER, individually and as Business Representative of Local 3, "JOHN DOE", JAMES SMITH, and "JANE ROE",

Defendants

SUMMONS

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To the above named Defendant :

You are hereby summoned and required to serve upon **Fellner and Rovins**

plaintiff's attorney, whose address is **230 Park Avenue, New York, New York 10017**

[REVENUE]

plaintiff's attorney, whose address **230 Park Avenue, New York, New York 10017**

an answer to the complaint which is herewith served upon you, within **20** days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Clerk of Court.

Deputy Clerk.

Date: **Brooklyn, New York**
August , 1976

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

----- x
MILLAR ELEVATORS INDUSTRIES, INC.,

Plaintiff,

-against-

LOCAL UNION NO. 3, INTERNATIONAL BROTHER-
HOOD OF ELECTRICAL WORKERS, THOMAS VAN
ARSDALE, individually and as Business Mana-
ger of Local 3, JAMES O'HARA, individually
and as Asst. Business Manager of Local 3,
JOHN KROMER, individually and as Business
Representative of Local 3, "JOHN DOE",
"JAMES SMITH", and "JANE ROE",

Defendants.

100-1

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:
: VERIFIED COMPLAINT
: 76 Civ.

76C 141

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Plaintiff, Millar Elevator Industries, Inc., by its
attorneys, Fellner and Rovins, for its complaint alleges:

1. This is an action arising under the Labor
Management Relations Act, 1947, as amended, 29 U.S.C. 141 et
seq. (LMRA) to compel arbitration of a dispute between
Millar Elevator Industries, Inc. ("Millar") and Local Union
No. 3, International Brotherhood of Electrical Workers
("Local 3") and to enjoin a work stoppage by Local 3 in
violation of the provisions of the Collective Bargaining
Agreement existing between Millar and Local 3.

JURISDICTION AND VENUE

2. The jurisdiction and venue of this Court is based upon 29 U.S.C. §185.

THE PARTIES

3. Millar is a corporation incorporated in the State of New York having its principal place of business at 501 West 42nd St New York, New York 10036.

4. Millar is an "Employer" within the meaning of 29 U.S.C. §152(2).

5. Local 3 is an unincorporated association and a "Labor Organization" within the meaning of 29 U.S.C. §152(5) having its principal place of business within this judicial district at 158-11 Jewel Avenue, Flushing, New York.

6. The defendants "John Doe", "Jane Smith" and "Jane Roe", first and last names being fictitious, true first and last names being unknown to the plaintiff, are individuals who as members of Local 3 and employees of the plaintiff, have or are actually engaged in the activities described herein in violation of the Collective Bargaining Agreement being carried on at the behest of Local 3 and at the direction of its officers and agents, including the defendants, Thomas

Van Arsdale, James O'Hara and John Kromer.

THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES

7. Millar and Local 3 are parties to a Collective Bargaining Agreement which is currently in full force and effect from January 7, 1976 through October 29, 1978.

8. The Agreement governs the wages, hours and other working conditions (hereinafter referred to as "the Agreement") all hourly paid production, maintenance, service and repair men, including group leaders.

9. The Agreement is a contract between an employer and a labor organization within the meaning of 29 U.S.C. §185.

NO STRIKE PROVISIONS

10. Article XV of the Agreement provides that there shall be no strike of any kind, including slowdowns, sit-down, stay-in, walk-out, boycott, picketing or work stoppage during the term of this Agreement. Any violation on the part of the Union officials shall constitute a breach of this Agreement.

ARBITRATION OF GRIEVANCES

11. Article XII of the Agreement provides for arbitration of any grievance arising out of any difference or dispute as to the interpretation or application of any provision of the Agreement which has not been satisfactorily settled through the grievance procedure prescribed therein.

DISPUTE BETWEEN THE PARTIES

12. On or about November 17, 1974 Millar began work under a contract between it and The Plaza Hotel on the Elevators located in the Plaza Hotel located at Fifth Avenue and Central Park South, in the City of New York, was and is being performed by Millar's employees covered by the Collective Bargaining Agreement between it and Local 3.

13. On July 29, 1976 Millar's President, Yale Citrin, was informed by James O'Hara, the Business Representative of Local 3, that the members of his Union would no longer perform any work on elevator numbers 5,6,7 and 8 at the Plaza Hotel and that he was informing the men that they were to get off that job, since the work that they were performing on those elevators was no longer within the scope of the work covered by the Collective Bargaining Agreement between Millar and Local 3.

14. On information and belief, on August 2, 1976, O'Hara and John Kromer, notified Robert Walker and Dennis Chasson, two of Millar's employees on the Plaza Hotel job that they were to secure the work that they and other Millar employees were performing on elevators 5, 6, 7 and 8, and not perform any further work on them.

ARBITRATION DEMANDED BY MILLAR

15. On August 2, 1976, Millar by Mailgram invoked the no strike provisions of the Collective Bargaining Agreement and demanded that all of Local 3's instructions to its employees to cease work be rescinded, and that Local 3 submit its dispute with Millar as to the scope of work covered by the Agreement to arbitration under the arbitration provisions of the Agreement.

CONTRACT VIOLATIONS BY LOCAL 3

16. On August 4, 1976 at approximately 3 P.M. the members of Local 3, employed by Millar at the Plaza Hotel project ceased all work on elevators 5, 6, 7 and 8.

17. No response has been received from Local 3 to Citrin's mailgram referred to in paragraph 15.

18. These actions described herein constitute a violation of the Collective Bargaining Agreement between the parties and a refusal on the part of Local 3 to comply with both the no strike provisions of the Agreement and its agreement to submit all disputes regarding the scope and application of the Agreement to binding arbitration.

MILLAR PROCEEDING IN GOOD FAITH

19. Millar is, and has requested that the outstanding disputes between it and Local 3 be processed under the arbitration procedures provided by the Agreement.

IRREPARABLE HARM TO MILLAR

20. As a result of the aforesaid actions of Local 3 or any other interference with Millar's operations, Millar will result in Millar's default under its contract with The Plaza Hotel.

21. The commission of the aforesaid unlawful acts by Local 3 have and will cause immediate and irreparable injury to Millar's reputation as a elevator company and by such loss its reputation as a reputable and reliable elevator company will be damaged.

22. The damage resulted in the unlawful acts of Local 3 cannot be fully estimated, calculated or compensated in money.

23. Upon information and belief, the aforesaid unlawful actions of Local 3 will continue unless restrained by this Court.

24. Millar does not have any adequate remedy at law for the injuries inflicted by Local 3 and awaiting to be inflicted upon it by Local 3.

25. Greater injury will be inflicted upon plaintiff than defendant by the denial of the relief herein requested, then will be inflicted upon defendants by the granting of the relief.

26. No previous application for the relief requested herein have been requested from this or any other Court.

27. The relief requested herein is not a restraining order or permanent injunction, in a case involving or growing out of a labor dispute prohibited under the provisions of 29 U.S.C. §101, but is an action to enforce a collective bargaining agreement between the parties.

RELIEF REQUESTED

WHEREFORE, plaintiff prays that this Court issue a temporary restraining order and preliminary injunction and that the Court make such injunction permanent upon final hearing:

1. Restraining and enjoining defendant, their officers, agents and employees and all persons acting in concert or participation with them from in any manner or by any means, directing, calling, causing, authorizing, inducing, instigating, conducting, continuing or engaging in any strike or any other concerted slow down or work stoppage, or concerted refusal to report to work or to accept or perform work assignments or any other concerted work stoppage by or among plaintiff's employees, or any other interference with plaintiff's usual operations as a result of a dispute over the scope of work covered by the Collective Bargaining Agreement between plaintiff and defendant.

2. Requiring defendants to issue such notices and take such steps as shall be necessary and appropriate to carry into effect the substance and intent of paragraph A herein including, but not limited to the requirements that defendants (1) publicly withdraw and rescind any orders, directions, requests or suggestions to employees of Millar to

do any of the acts specified in said paragraph A hereof, and (2) affirmatively directing and advising members of defendant Unions employed by Millar, by written notice to refrain from the doing of any such acts and to post such notice at places normally used for the posting of such notices directed to the attention of said persons.

3. That defendant, Local 3, by its agents and officers be required to submit to arbitration any and all disputes it may have as to the scope of the work covered by the Collective Bargaining Agreement between it and Local Union No. 3 as provided in Article XI of the Agreement between them effective January 7, 1976.

Plaintiff further prays for any other different or further relief which to this Court may seem just, equitable and proper, together with the costs and disbursements of this action.

August 4, 1976


FELLNER AND ROVINS
Attorneys for Plaintiff

By:
Carl A. Schwarz, Jr.
A Member of the Firm
230 Park Avenue
New York, New York 10017
(212) 686-4500

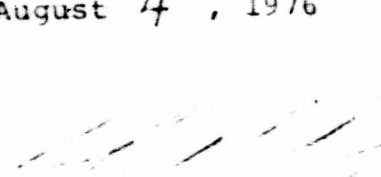
STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

YALE CITRIN, being duly sworn, deposes and says:

I am the President of Millar Elevator Industries, Inc., the plaintiff in this action. I have read the foregoing ~~Verified~~ Complaint and know the contents thereof; the same is true to my knowledge except as to matters therein stated to be alleged on information and belief and as to those matters I believe them to be true.


Yale Citrin, President

Sworn to before me
August 4, 1976


Notary Public

CARL A. SCHWARTZ, JR.
Notary Public, State of New York
No. 30-3559272 Nassau County
Qualified in New York County
Term Expires March 30, 1977

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

----- x

MILLAR ELEVATOR INDUSTRIES, INC., :
 : 76 Civ.

Plaintiff, :

-against- : ORDER TO SHOW CAUSE WITH
 : TEMPORARY RESTRAINING
 : ORDER

LOCAL UNION NO. 3, INTERNATIONAL :
BROTHERHOOD OF ELECTRICAL WORKERS, :
THOMAS VAN ARSDALE, individually and :
as Business Manager of Local 3, JAMES :
O'HARA, individually and as Asst. Busi- :
ness of Local 3, JOHN KROMER, indivi- :
dually and as Business Representative :
of Local 3, "JOHN DOE", "JAMES SMITH", :
and "JANE ROE", :

Defendants. :

----- -x

Upon the summons, verified complaint, undertaking and affidavit of Yale Citrin, sworn to August 4, 1976 and sufficient reasons appearing therefore, it is hereby

ORDERED, that the defendants and each of them appear before this Court at a Motion Part thereof on the 13th day of August, 1976, *before judge in session* ~~at in Courtroom~~, in the United States Courthouse, ~~Brooklyn~~ *Manhattan*, New York, to show cause why this Court should not enter an order pending final determination of this action, as follows:

A. Restraining and enjoining defendants, their officers, agents and employees, and all persons acting in

* *Changed to August 11th 1976, 9³⁰ AM at Brooklyn*

on Court motion at request of judge in session

5/14/76 10 55 AM

Carroll Pratt
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concert or participation with them, from in any manner or by any means, directing, calling, causing, authorizing, inducing, instigating, conducting, continuing or engaging in any strike or other concerted slowdown or work stoppage, or concerted refusal to report for work or to accept or perform work assignments or overtime or any other concerted work stoppage, by or among plaintiff's employees, or other interference with plaintiff's usual operations.

B. Requiring the defendants to issue such notices and take such steps as shall be necessary and appropriate to carry into effect the substance and intent of paragraph "A" hereof, including, but not limited to, the requirement that defendants (1) publicly withdraw and rescind any orders, directions, requests or suggestions to employees of plaintiff to do any of the acts specified in said paragraph "A" hereof, and (2) affirmatively direct and advise members of defendant unions employed by plaintiff, by written notice, to refrain from the doing of any such acts and to post such notice at places normally used for the posting of notices directed to the attention of said persons.

C. That defendants, Local 3, by its agents and officers be required to submit to arbitration any and all disputes it may have as to the scope of the work covered by the Collective Bargaining Agreement between it and Local Union No. 3 as provided in Article XI of the Agreement between

them effective January 7, 1976.

D. Directing such other, further or different relief to which the plaintiff may be entitled in the premises.

And it further appearing to the Court, from verified complaint and affidavits above mentioned, that the acts alleged therein are in violation of the Collective Bargaining Agreement between plaintiff and defendant, Local 3, have been and are being committed, threatened and planned by the defendants; that said unlawful acts will continue and occur unless restrained by order of this Court; that the commission of such acts will cause immediate and irreparable injury, loss or damage to plaintiff before a hearing can be held on plaintiff's motion for interlocutory relief; that such unlawful acts will deprive plaintiff of substantial revenues; that said unlawful acts will cause immediate and severe injury to the reputation of plaintiff as a reliable elevator service company; that damage to the plaintiff resulting from such unlawful acts cannot be wholly estimated, calculated or compensated in money, and that because thereof, the damages and plaintiff have sustained and will sustain are irreparable; and the Court being satisfied that notice of the application for a temporary restraining order was given to defendants, and that a restraining order preliminary to hearing upon the plaintiff's motion should issue because of the unlawful acts alleged by the verified complaint; and upon plaintiff's giving security, as fixed by the Court, in the sum of \$3,500^{00 CP}₄₅₀₅

conditioned as required by law, it is hereby further

ORDERED, until the hearing of this motion, unless this Order be dissolved prior thereto, or extended thereafter, defendants, their officers, agents and employees, and all persons acting in concert or participation with them, be restrained, prohibited and enjoined from in any manner or by any means, directing, calling, authorizing, inducing, instigating, constituting, continuing or engaging in any strike or other concerted slowdown or work stoppage, or concerted refusal to report for work or to accept or perform work assignments of overtime, or any other concerted work stoppage, by or among plaintiff's employees, or other interference with plaintiff's usual operations; and it is further

ORDERED, that defendants forthwith issue such notices or take such steps as shall be necessary to carry into effect the substance and intent of the preceding paragraph and it is further

ORDERED, that pursuant to Rule 26(a) of the Federal Rules of Civil Procedure, leave is hereby granted to plaintiff to take the deposition of any of said defendants upon service upon such defendants of a copy of this Order, with twenty-four (24) hours' written notice of the time and place of such taking; and it is further

ORDERED, that pursuant to Rule 4(c) of the Federal Rules of Civil Procedure, the following person is hereby designated to serve all process in this action: Harvey Kaplan; and it is further

ORDERED, that personal service of a copy of this Order and a copy of the verified complaint on which it is made shall be good and sufficient service thereof if made on or before August 5th, 1976 at 5:30 pm Issued at Brooklyn, New York this 5th day of August, 1976 at the United States District Court, New York at consented to 8/5/76 Menagh Trainor & Rothfeld.

/ George C. Pratt

U.S.D.J.

GCP
USDJ



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THE AMERICAN INSURANCE COMPANY
NATIONAL SURETY CORPORATION
ASSOCIATED INDEMNITY CORPORATION
AMERICAN AUTOMOBILE INSURANCE COMPANY

BOND NO. 2475192

DISTRICT COURT OF THE UNITED STATES
EASTERN DISTRICT OF NEW YORK

MILLAR ELEVATOR INDUSTRIES INC.

Plaintiff

against

**LOCAL UNION #3 INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, et al**

Defendants

UNDERTAKING ON INJUNCTION

THE ABOVE NAMED plaintiff having applied to one of the Judges of this Court for an order to show cause why a preliminary injunction should not issue and for a temporary restraining order, pending hearing thereon, and Judge George C. Pratt

having signed the said order to show cause restraining the defendant

as more fully set forth in the papers herein.

WHEREAS, Judge George C. Pratt having on the 5th
day of August, 1976 granted a temporary restraining order and directed that plaintiff file security in the sum of . . .

THREE THOUSAND FIVE HUNDRED AND NO/100 (\$3,500.00)

NOW, THEREFORE, NATIONAL SURETY CORPORATION, having an office and place of business in the City, County and State of New York, does hereby, pursuant to the Statute in such case made and provided, undertaken in the sum of

THREE THOUSAND FIVE HUNDRED AND NO/100 (\$3,500.00) DOLLAR

that the plaintiff will pay to the defendant so enjoined, such damages, and costs not exceeding the before mentioned sum

they may sustain by reason of said order to show cause and

injunction if same should issue, if the Court finally decides that the plaintiff was not entitled thereto, such damages and costs to be ascertained and determined by the Court, or by a Referee appointed by the Court, or by a writ of inquiry, or otherwise as the Court shall direct.

NATIONAL SURETY CORPORATION

DATED, New York, August 4, 1976.

By Karen McMullin, Attorney-in-Fact

STATE OF NEW YORK
COUNTY OF New York

4th

day of August

in the year 1976

before me personally came

Karen McMullin

to me known, who being by me duly sworn, did depose and say that he/she resides in

83-35 116th St., Richmond Hill, N.Y.

that he/she is an Attorney-in-Fact of NATIONAL SURETY CORPORATION, the corporation described in and which executed above instrument, that he/she knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal, that it was so affixed by the board of directors of said corporation, and he/she signed his/her name thereto by his order, and that the Superintendent of Insurance of the State of New York has, pursuant to Chapter 862 of the Laws of the State of New York for the year constituting Chapter 28 of the Consolidated Laws of the State of New York known as the Insurance Law, as amended, issued to the National Surety Corporation his/her certificate that said Corporation is qualified to become and be accepted as surety or guarantor on all bonds, undertakings, recognizances, guarantees and other obligations required or permitted by law, and that such certificate has been revoked.

STATE OF NEW YORK
COUNTY OF New York

New York

Jeremy N. Wilder

POWER OF ATTORNEY

Notary Public

Assistant Secretary of NATIONAL SURETY CORPORATION do hereby certify that the following is a full and correct copy of Article VII and VIII of the By-laws of the NATIONAL SURETY CORPORATION adopted on the 31st day of December, 1972, and now in full force and effect to wit:

Article VII. Execution of Instruments Pertaining to the Insurance Business of the Company

Section 28. All policies, bonds, undertakings, certificates of insurance, cover notes, recognizances, contracts of indemnity, endorsements, stipulations, waivers, consents of sureties, re-insurance acceptances or agreements, surety and co-surety obligations and agreements, underwriting undertakings, and all other instruments pertaining to the insurance business of the Company, shall be validly executed when signed on behalf of the Company by the Chairman of the Board of Directors, the President, any Vice President, or by any other officer, employee or agent of the Company in its official capacity to be signed by the Chairman of the Board of Directors, the President, any Vice President, or any other person empowered by the Board of Directors, the Chairman of the Board of Directors, the President, or any Vice President to give such an authorization, provided that all policies of insurance shall also bear the signature of the Secretary, which may be facsimile, and unless manually signed by the Chairman of the Board of Directors, the President or a Vice President, a facsimile signature of the Chairman of the Board of Directors or the President. A facsimile signature of a former officer shall be of the same validity as that of an existing officer.

The affixing of the Corporate seal shall not be necessary to the valid execution of any instrument but any person authorized to execute or attest such instrument may affix the Company's seal thereto.

Article VIII. Appointment and Authority of Resident Assistant Secretaries, and Attorneys-in-Fact, and Agents to Accept Legal Process and Make Appearances

Section 29. Appointment The Chairman of the Board of Directors, the President, any Vice President or any other person authorized by the Board of Directors, the Chairman of the Board of Directors, the President or any Vice President, may, from time to time, appoint Resident Assistant Secretaries and Attorneys-in-Fact to represent and act for and on behalf of the Company and Agents to accept legal process and make appearances in and on behalf of the Company.

Section 30. Authority The authority of such Resident Assistant Secretaries, Attorneys-in-Fact, and Agents shall be as prescribed in the instrument evidencing their appointment, and any such appointment and all authority granted thereby may be revoked at any time by the Board of Directors or by any person empowered to make such appointment.

to further certify that pursuant to said By-laws, Richard Abraham, Lawrence K. Andsager, Roland Blackburn, Harold J. Carr, Lawrence Carr, Helen G. Crizes, Robert DiGnata, Stella Dill, George H. J. Kenneth R. Hestman, Patricia E. Kelly, Robert M. Kumpfbeck, Roseann Kwasatowski, Charles W. LeVine, James D. McAdoo, Karen McMullin, Karen A. Merriman, Zaida Mufiz, Robert K. O'Brien, na Paris, Joan M. Plarner, Walter Pratt, Dennis B. Reding, Roberta Rosenfeld, James T. Ryan, Noel Slinker, Arthur Thompson, Jr., Michael E. Uptegrove, Joseph A. Valente, Lois R. Vance, Barbara J. Wheaton and Jeremy N. Wilder, were each duly appointed Attorneys-in-Fact of NATIONAL SURETY CORPORATION on the 15th day of February, 1976, with full power and authority to execute, acknowledge and deliver any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings, without limitation as to the amount, and that such power of attorney is in full force and effect and has not been revoked.

to further certify that the Superintendent of Insurance of the State of New York has issued to the NATIONAL SURETY CORPORATION his certificate that said Company is qualified to become and be accepted as surety or guarantor on all bonds, undertakings and other obligations or guarantees, as provided in the Insurance Law of the State of New York and all laws amendatory thereof and supplementary thereto, and that such certificate has not been revoked.

Assistant Secretary

written and sworn to before me this

4th

day of August, 1976

Notary Public

REV - 3-76

BEST COPY AVAILABLE



FIREMAN'S FUND INSURANCE COMPANY
THE AMERICAN INSURANCE COMPANY
NATIONAL SURETY CORPORATION
ASSOCIATED INDUSTRIAL CORPORATION
AMERICAN AUTOMOBILE INSURANCE COMPANY

BOND NO. 2475192

DISTRICT COURT OF THE UNITED STATES
EASTERN DISTRICT OF NEW YORK

MILLAR ELEVATOR INDUSTRIES INC.

Plaintiff

against

UNDERTAKING ON INJUNCTION

LOCAL UNION #3 INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, et al

Defendants

THE ABOVE NAMED plaintiff having applied to one of the Judges of this Court for an order to show cause why a preliminary injunction should not issue and for a temporary restraining order, pending hearing thereon, and Judge George C. Pratt having signed the said order to show cause restraining the defendant

as more fully set forth in the papers herein.

WHEREAS, Judge George C. Pratt having on the 5th day of August 1976 granted a temporary restraining order and directed that plaintiff file security in the sum of THREE THOUSAND FIVE HUNDRED AND NO/100 (\$3,500.00)

NOW, THEREFORE, NATIONAL SURETY CORPORATION, having an office and place of business in the City, County and State of New York, does hereby, pursuant to the Statute in such case made and provided, undertaken in the sum of THREE THOUSAND FIVE HUNDRED AND NO/100 (\$3,500.00) DOLLAR

that the plaintiff will pay to the defendant so enjoined, such damages, and costs not exceeding the before mentioned sum they may sustain by reason of said order to show cause and as injunction if same should issue, if the Court finally decides that the plaintiff was not entitled thereto, such damages and costs to be ascertained and determined by the Court, or by a Referee appointed by the Court, or by a writ of inquiry, or otherwise as the Court shall direct.

NATIONAL SURETY CORPORATION

DATED, New York, August 4 1976.

By Karen McMullin, Attorney-in-Fact

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STATE OF NEW YORK
COUNTY OF New York

On the 4th day of August, 1976 before me personally came

Karen McMullin

to me known, who, being by me duly sworn, did depose and say that he/she resides in

83-35 116th St., Richmond Hill, N.Y.

that he/she is an Attorney-in-Fact of NATIONAL SURETY CORPORATION, the corporation described in and which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the board of directors of said corporation, and that he/she signed his/her name thereto by his order; and that the Superintendent of Insurance of the State of New York has, pursuant to Chapter 882 of the Laws of the State of New York for the year 1939 constituting Chapter 28 of the Consolidated Laws of the State of New York known as the Insurance Law, as amended, issued to the National Surety Corporation his/her certificate that said Corporation is qualified to become and be accepted as surety or guarantor on all bonds, undertakings, recognizances, guarantees and other obligations required or permitted by law; and that such certificate has not been revoked.

STATE OF NEW YORK
COUNTY OF New York

POWER OF ATTORNEY

Notary Public

Jeremy H. Wilder

I, Assistant Secretary of NATIONAL SURETY CORPORATION, do hereby certify that the following is a full and correct copy of Article VII and VIII of the By-laws of the NATIONAL SURETY CORPORATION adopted on the 31st day of December, 1972, and now in full force and effect, to wit:

Article VII. Execution of Instruments Pertaining to the Insurance Business of the Company.

Section 28. All policies, bonds, undertakings, certificates of insurance, cover notes, recognizances, contracts of indemnity, endorsements, stipulations, waivers, consents of sureties, re-insurance acceptances or agreements, equity and co-surety obligations and agreements, underwriting underlings, and all other instruments pertaining to the insurance business of the Company shall be validly executed when signed on behalf of the Company by the Chairman of the Board of Directors, the President, any Vice President, or by any other officer, employee, agent or attorney-in-fact authorized to do so by (i) the Board of Directors, (ii) the Chairman of the Board of Directors, (iii) the President, (iv) any Vice President, or (v) any other person empowered by the Board of Directors, the Chairman of the Board of Directors, the President, or any Vice President to give such an authorization, provided that all policies of insurance shall also bear the signature of the Secretary, which may be a facsimile, and unless manually signed by the Chairman of the Board of Directors, the President, or a Vice President, a facsimile signature of the Chairman of the Board of Directors or the President. A facsimile signature of a former officer shall be of the same validity as that of an existing officer.

The affixing of the Corporate seal shall not be necessary to the valid execution of any instrument but any person authorized to execute or alter such instrument may affix the Company's seal thereto.

Article VIII. Appointment and Authority of Resident Assistant Secretaries, and Attorneys-in-Fact, and Agents to Accept Legal Process and Make Appearances.

Section 29. Appointment. The Chairman of the Board of Directors, the President, any Vice President, or any other person authorized by the Board of Directors, the Chairman of the Board of Directors, the President or any Vice President, may, from time to time, appoint Resident Assistant Secretaries and Attorneys-in-Fact to represent and act for and on behalf of the Company and Agents to accept legal process and make appearances for and on behalf of the Company.

Section 30. Authority. The authority of such Resident Assistant Secretaries, Attorneys-in-Fact, and Agents shall be as prescribed in the instrument evidencing their appointment; and any such appointment and all authority granted thereby may be revoked at any time by the Board of Directors or by any person empowered to make such appointment.

I do further certify that pursuant to said By-laws, Richard Abraham, Lawrence K. Andeager, Roland Blackburn, Harold J. Carr, Lawrence Carr, Helen G. Cruse, Robert DiScala, Stella Dill, George H. Faha, Kenneth R. Heitman, Patricia E. Kelly, Robert M. Kumpfbach, Roseann Kwiatkowski, Charles W. LeVine, James D. McAdoo, Karen McMullin, Karen A. Merriam, Zaida Mults, Robert K. O'Brien, Regina Paris, Joan M. Plarner, Walter Pratt, Dennis B. Reding, Roberta Rosenfeld, James T. Ryan, Noel Slinzer, Arthur Thompson, Jr., Michael E. Uptegrove, Joseph A. Vailone, Lois R. Vance, Barbara Walker, Robert J. Wheaton and Jeremy H. Wilder, were each duly appointed Attorney-in-Fact of NATIONAL SURETY CORPORATION on the 15th day of February, 1976, with full power and authority to execute, acknowledge and deliver any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings, without limitation as to the amount. Said power of attorney is in full force and effect and has not been revoked.

I do further certify that the Superintendent of Insurance of the State of New York has issued to the NATIONAL SURETY CORPORATION his certificate that said Company is qualified to become and be accepted as surety or guarantor on all bonds, undertakings and other obligations or guarantees, as provided in the Insurance Law of the State of New York and all laws amendatory thereof and supplementary thereto; and that such certificate has not been revoked.

Assistant Secretary

Subscribed and sworn to before me this

4th day of August, 1976

Notary Public

REV - 376

BEST COPY AVAILABLE

Union Consent to Temporary
Restraining Order - See page 20

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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MILLAR ELEVATOR INDUSTRIES, INC.,	:	
	:	76 Civ.
Plaintiff,	:	
-against-	:	AFFIDAVIT IN SUPPORT OF
	:	APPLICATION FOR TEMPORARY
	:	<u>RESTRAINING ORDER</u>
LOCAL UNION NO. 3, INTERNATIONAL	:	
BROTHERHOOD OF ELECTRICAL WORKERS,	:	
THOMAS VAN ARSDALE, individually and	:	
as Business Manager of Local 3, JAMES	:	
O'HARA, individually and as Asst. Busi-	:	
ness of Local 3, JOHN KROMER, indivi-	:	
dually and as Business Representative	:	
of Local 3, "JOHN DOE", "JAMES SMITH",	:	
and "JANE ROE",	:	
Defendants.	:	

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STATE OF NEW YORK)
 :
COUNTY OF NEW YORK)

YALE CITRIN, being duly sworn, deposes and says:

1. I am the President of Millar Elevator Industries, Inc., ("Millar") and I have personal knowledge of the facts recited herein.

THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES

2. Millar is engaged in the business of repairing, reconstructing, upgrading, maintaining, modernizing, installing and converting elevators to automatic operation.

3. Millar recognizes Local Union No. 3, International Brotherhood of Electrical Workers ("Local 3") as the bargaining agent for hourly paid production, maintenance, service and repair men, including group leaders in its employ.

4. Millar as member of the Elevator Industries Association Inc. (EIA) has authorized EIA to act as its representative for purposes of collective bargaining with Local Union No. 3, International Union of Electrical Workers (Local 3).

5. Local 3 and EIA are parties to an agreement effective from January 7, 1976 through October 29, 1978 (hereinafter referred to as "the Agreement") which governs the wages, hours and other working conditions for Millar's employees represented by Local 3.

6. A copy of the Agreement along with Exhibits A and B to the Agreement which are incorporated by reference into said Agreement are attached hereto as Exhibit 1.

NO STRIKE PROVISIONS

7. Article XV of the Agreement provides as follows:

"No Strike - No Lockout

The employees recognize that the value and security of their jobs depend to a large degree upon the ability of their Companies to maintain a proper competitive position in the industry and to that end agree:

(a) To make an honest and conscientious effort to eliminate waste and increase their efficiency in their respective jobs and

(b) That there shall be no strike of any kind, including slowdowns, sit-down, stay-in, walk-out, boycott, picketing or work stoppage during the term of this Agreement. Any violation (1) on the part of the Union officials shall constitute a breach of this Agreement or (2) on the part of any employee, whether or not an official of the Union, shall constitute just cause for disciplinary action, which may include discharge.

Each Company pledges that there shall be no lockout during the term of this Agreement."

8. Article XII of the Agreement reads as follows:

"ARBITRATION

Any grievance arising out of a difference or dispute as to the interpretation or application of any provision of this Agreement which has not been satisfactorily settled through the grievance procedure prescribed herein, shall be referred to a Board of Arbitration consisting of three (3) men.

Within two (2) working days after the decision of the President of a Company on the grievance, the party seeking arbitration shall notify the other party in writing to that effect at the same time state in writing the facts involved in the grievance.

The Board of Arbitration shall be chosen as follows:

Within five (5) working days after the receipt of the Notice of Arbitration referred to above, one member shall be appointed by the Company and one member shall be appointed by the Union. Within five (5) working days of their appointment, these two shall meet and choose the third member who

shall act as Chairman of the Board of Arbitration. If they fail to agree on the third member, such third member shall be appointed by the American Arbitration Association in accordance with its established procedure in such cases.

The Board of Arbitration shall not by any decision or award either add to or subtract from any of the terms or conditions of this Agreement.

Any fees or other expenses or attorneys, representatives or of the arbitrator appointed by the respective parties shall be borne by the party so appointing them. Any fees or expenses of the third arbitrator shall be borne by the parties equally."

9. On or about November 17, 1974, Millar began work under a contract with the Plaza Hotel located at Fifth Avenue and Central Park South, in the City of New York, to repair, upgrade, modernize, install and replace existing elevators to improved automatic operation. The work was and is being performed by Millar's employees covered by the Collective Bargaining Agreement between it and Local 3.

10. The work being performed on the Plaza job is the same work that Millar's Local 3 employees have performed ever since Local 3 represented these employees.

11. On July 29, 1976, I was informed by James O'Hara the Business Representative of Local 3, that the members of his Union would no longer perform any work on elevator numbers 5, 6, 7 and 8 at the Plaza Hotel and that he was informing the men that they were to get off that job because it was not Local 3's work.

12. I told O'Hara that his Union was under contract to Millar and that this work was covered by that contract and that if Local 3 refused to perform that work, they would be in violation of the no strike provisions of our contract.

13. Robert Walker and Dennis Chasson, Millar's employees on the Plaza Hotel job were notified by defendants, Kromer and O'Hara that they were to secure the work and that they and other Millar employees who were working on elevators 5, 6, 7 and 8 were not to perform any further work on them.

14. On August 2, 1976, I sent the following mailgram to Mr. Thomas VanArsdale, of Local 3: (The confirmatory copy of the mailgram is attached as Exhibit 2.)

"We have been informed that members of your Union employed by our Company have been instructed by the Union to no longer perform work on elevators number 5, 6, 7 and 8 at the Plaza Hotel. We consider this work stoppage in violation of the no strike provision of our agreement. Your claim that this work is not within the scope of work covered by our agreement is a matter subject to arbitration. We demand that you immediately rescind any and all instructions to your members to cease this work and further demand that you submit this matter to arbitration. We stand ready to select a Board of Arbitration."

CONTRACT VIOLATIONS BY LOCAL 3

15. On August 4, 1976 at approximately 3 P.M. the members of Local 3, employed by Millar at the Plaza Hotel project ceased all work on elevators 5, 6, 7 and 8.

16. No response has been received from Local 3 to my mailgram of August 2, 1976 requesting arbitration.

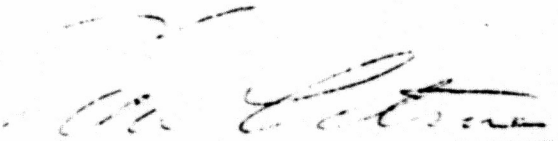
17. I respectfully direct the Courts attention to Exhibit A to the Agreement (Exhibit 1 to this Affidavit) containing the Job Classification Descriptions concerted by this Agreement. The description of a "Grade A Elevator Repair Mechanic" specifies that he is to "Repair, modernize and install elevators". This is the work that was required to be performed on elevators 5, 6, 7 and 8 at the Plaza Hotel. Local 3 employees have always performed this work, and now refuse to so perform in violation of our Agreement.

18. These actions described herein constitute a violation of the Collective Bargaining Agreement between the parties and a refusal on the part of Local 3 to comply with both the no strike provisions of the Agreement and its agreement to submit all disputes regarding the scope and application of the Agreement to binding arbitration.


19. As a result of actions of Local 3's refusal to perform this work at the Plaza, Millar may default under its contract. Millar has expended large amounts of money for advertising and building its reputation as a reputable elevator company. Local 3 actions will injure that preparation and good will which cannot be fully estimated, calculated or compensated in money.

20. I have no reason to believe that unless the aforesaid actions of Local 3 will continue unless restrained by this Court.

I therefore request that this Court grant the relief requested in the Complaint.


YALE CITRIN

Sworn to before me
August 4, 1976


Notary Public

CARL A. SCHWARZ, JR.
Notary Public, State of New York
No. 30-3559272 Nassau County
Qualified in New York County
Term Expires March 30, 1977

Exhibit 1

AGREEMENT between Elevator Industries Association, Inc. (hereinafter called the "Company") and Local Union No. 3, International Brotherhood of Electrical Workers (hereinafter called the "Union").

ARTICLE I

TERM

This Agreement shall be effective as of Wednesday, January 7, 1976, and shall continue in full force and effect without reopening of any kind until 11:59 P.M. on Sunday, October 29, 1978.

ARTICLE II

RECOGNITION

The Company recognizes the Union as the exclusive bargaining representative of the employees covered by this Agreement for collective bargaining with respect to wages and other conditions of employment.

ARTICLE III

EMPLOYEES

(a) The terms of this Agreement shall apply to and affect those employees of the Company described as follows:

All hourly paid production, maintenance, service and repairmen including group leaders, (excluding all salaried and office employees, watchmen, guards, errand boys, salaried foremen or assistant foremen, executives and supervisory employees).

(b) "Employed within the industry" as used within this Agreement shall mean an employee employed in a job classification covered by this Agreement and by a Company in contractual agreement with the EE Division of the Union or in a job classification covered by an Agreement or Agreements with predecessor unions.

ARTICLE IV

REGULAR AND OVERTIME WORKING HOURS

(a) Work Day: A normal work day shall be defined as eight (8) hours of work within the calendar day. The scheduled working hours and length of timing of lunch periods shall be determined by the Company. For work performed by an employee within a normal work day, he shall be paid at his regular straight time hourly rate. For work performed by an employee in excess of eight (8) hours of work in a calendar day, he shall be paid at one and one-half times his regular straight time hourly rate. The scheduled hours of work shall be within the hours of 8:00 A.M. to 5:00 P.M. The Company

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reserves the right to pay an employee at the rate of one and one-half times his regular straight time hourly rate for work performed on what the Company, in its discretion, considers an emergency job even though the employee has not worked a full eight (8) hours in his normal work day.

(b) (1) The work week shall commence at 12:01 A.M. Monday and end at 12:00 P.M. the following Sunday. All work performed in excess of forty (40) straight time hours of work (other than daily overtime hours or overtime premium pay hours) during the work week shall be paid for at the rate of time and one-half the regular straight time hourly rate.

(2) In any event, work performed on Saturday, on Sunday and on any of the designated holidays, shall be paid for at one and one-half times the regular straight time hourly rate except that:

(A) Repair Jobs (not call-backs) performed on Sunday or on a holiday outside the shop on elevators shall be paid for at double time; and

(B) Any mechanic who performs work in a job between midnight and 6:00 A.M. shall receive double time for all hours worked on such jobs up to 8:00 A.M. All work started between 6:00 A.M. and 8:00 A.M. shall be paid for at time and one-half only during such hours.

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(c) There shall not be any pyramiding of daily and weekly overtime premium pay.

(d) Reporting Time. Employees reporting for work at their regular scheduled starting time or at the time ordered by the Company to report and finding no work available will be paid four (4) hours reporting time at their regular straight time hourly rate unless they shall have been notified on the preceding day that no work would be available. This clause shall not apply in the following cases:

(1) Where the employee did not receive notice on the preceding day because of his absence from work.

(2) In any situation in which work is not available because of an emergency which is recognized as such by his Company and the Union.

(3) Where the employee refuses the work assigned to him by the Company.

Where employees qualify for reporting time pay under this section (d), they will receive credit for eight (8) hours toward the forty (40) hours required to qualify for overtime pay in accordance with the provisions of Article IV, section (b) (1).

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(e) Waiting Time. Elevator Maintenance Mechanics, Inspectors and Repair Mechanics who arrange with their Company that they may be available for emergency calls, or who are called out on emergency jobs on Saturdays, on Sundays, or on the designated holidays, will be guaranteed a minimum of six (6) hours pay at their regular straight time hourly rates.

(f) Elevator Maintenance Mechanics and Inspectors who arrange with a Company that they may be available for emergency calls at night during the regular work week shall, if they are not called out on any emergency jobs, be entitled to one (1) hour's pay at their regular straight time hourly rates as standby time.

(g) When work is scheduled to be performed during regular working hours on any of the designated holidays, the employee will be paid at one and one-half times his straight time regular hourly rate (an employee working on an Elevator Repair Job on the outside will be paid at two times his straight time hour rate) for work performed on such Holiday in addition to any payment required by Article V, section (c) below.

(h) It is not to be construed by any clause in Section IV or in any other section of this Agreement that a Company guarantees any period of employment.

(i) Where the building owner requires double shift coverage for a building or complex of buildings, then the Employer may schedule two eight (8) hour shifts at straight time between the hours of 8:00 A.M. and 12:00 midnight, Monday thru Friday. Employees working the second shift shall receive a 10% shift differential. Employees assigned to such In Building Maintenance shall not be allowed to leave the building or building complex to perform any other outside work, during his scheduled hours. This paragraph shall only be applicable to new contracts executed after the effective date of this agreement and shall not apply to a building or building complex covered by an existing contract under Local 3 (Elevator Division) jurisdiction for the duration of this agreement. This provision shall not apply to Repair Mechanics. Assignment of employees under this paragraph shall be on a voluntary basis unless there are no qualified volunteers in which case the Employer may assign the work. A complex of buildings shall be construed to mean any group of buildings owned by a single owner or corporation that can be geographically encircled by a single continuous line.

ARTICLE V

HOLIDAYS

(a) The following days are designated as Holidays:

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New Year's Day
Washington's Birthday
Decoration Day
Independence Day
Labor Day
Columbus Day
Election Day
Veterans Day (Nov. 11)
Thanksgiving Day
Christmas Day

(b) Lincoln's Birthday shall be added as an additional paid holiday, except, however, that where the employee agrees to work on said holiday, at the request of the Employer, he shall be entitled to another day off of his own choosing confirmed in writing with pay in lieu of overtime pay for the work on Lincoln's Birthday. Subject to the approval of the Employer, the employee may work the compensatory day worked in which event he shall receive holiday pay for said day worked. Employees who voluntarily terminate their employment prior to their compensatory day off shall receive eight hours pay for said day upon their termination. Employees who are terminated by the Employer prior to their compensatory day off shall receive twelve hours compensation.

(c) Each employee who has been continuously and actively employed in the Industry for a period of thirty (30) days prior to each of the designated holidays, or any employee who may be temporarily unemployed from the Industry but is recalled and reports for work in the Industry on no more than forty-eight (48) hours notice during any said thirty (30)

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day period, remaining thereafter in continuous and active employment prior to the particular holiday, will receive eight (8) hours pay at the straight time hourly rate for each such holiday, providing the employee works the work day before and the work day succeeding such holiday, unless excused by the Company on account of severe illness or similar reason acceptable to the Company.

(d) If any designated Holiday falls on a Sunday, holiday premium time shall be paid only for work performed on the day commonly celebrated as such Holiday, Monday.

(e) If a designated Holiday falls on a Saturday, an employee, at the discretion of the Company, may be given Friday or Monday of that weekend as the designated paid Holiday. Any employee who, at the request of the Employer, elects to work on the Friday or Monday designated as his Holiday shall be paid at premium time for the designated day, except that if the Employer and employee agree, the employee shall work the Friday before and Monday after said holiday at straight time hourly pay and shall receive an additional eight (8) hours straight time pay for that holiday.

(f) Under no circumstances, is it to be construed that an employee, for work on a designated holiday, will be paid more than two and one-half times his hourly rate (or triple time on Elevator Repair Jobs), including non-worked Holiday pay.

A 41ARTICLE VIVACATIONS

(a) Each employee covered by this Agreement who has been employed within the industry for less than one (1) year immediately prior to June 1st preceding the yearly vacation period, and who is actually working for his Company at the date scheduled for his vacation, shall receive vacation at the rate of four (4) hours for each four (4) weeks worked prior to June 1st, but in no event shall such vacation exceed forty (40) hours of vacation pay at the straight time hourly rate prevailing at the time of his vacation.

(b) Each employee covered by this Agreement who has been employed within the industry for one (1) year, but less than two (2) years immediately prior to June 1st preceding the yearly vacation period, and who is actually working for his Company at the date scheduled for his vacation, shall receive the vacation days earned the previous June 1st plus five (5) days (total not to exceed ten days vacation) and shall be paid for each vacation day of eight hours (8) straight time at his hourly rate prevailing at the time of the vacation, but not in excess of eighty (80) hours.

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However, if any such employee shall have been absent from work in excess of four (4) weeks, excluding prior years vacation, during the twelve (12) months immediately preceding his scheduled vacation, he shall receive vacation pay for that twelve (12) months period equal to four (4) hours for each four (4) weeks working during the twelve (12) months immediately preceding his vacation, but not in excess of a total of forty (40) hours for that twelve (12) month period.

(c) Each employee covered by this Agreement who has been employed within the industry for two (2) years or more immediately prior to June 1st preceding the yearly vacation period, and who is actually working for his Company at the date scheduled for his vacation, shall receive a two (2) week vacation and shall be paid for those two (2) weeks a total of eighty (80) hours straight time at his hourly rate prevailing at the time of the vacation.

However, if any such employee shall have been absent from work in excess of four (4) weeks, excluding prior year's vacation, during the twelve (12) months immediately preceding his scheduled vacation, he shall receive vacation pay equal to eight (8) hours for each four (4) weeks worked during the twelve (12) months immediately preceding his vacation, but not in excess of a total of eight (80) hours.

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(d) Any employee covered by this Agreement who can establish that he has been employed within the industry and job classifications covered by this Agreement for fifteen (15) or more consecutive years immediately prior to June 1st preceding the yearly vacation period as aforesaid, and who is actually working for his Company at the time scheduled for his vacation, shall receive three (3) weeks' vacation, no more than two (2) weeks of which shall be consecutive at the discretion of his Employer, and shall be paid for those three (3) weeks a total of one hundred and twenty (120) hours straight time at his hourly rate prevailing at the time of the vacation. Effective with the vacation period commencing June 1, 1977, the service requirement for three (3) weeks vacation shall be reduced to twelve (12) or more consecutive years.

However, if any such employee shall have been absent from work in excess of four (4) weeks, excluding the prior year's vacation, during the twelve (12) months immediately preceding his scheduled vacation, he shall receive vacation pay equal to twelve (12) hours for each four (4) weeks worked during the twelve (12) months immediately preceding his vacation, but not in excess of a total of one hundred and twenty (120) hours.

(e) Effective with the vacation period commencing June 1, 1977, any employee covered by this Agreement who can establish that he has been employed within the industry and job classifications covered by this Agreement for twenty-five (25) or more consecutive years immediately prior to June 1st preceding the yearly vacation period as aforesaid, and who is actually working for his Company at the time scheduled for his vacation, shall receive four (4) weeks' vacation, no more than two (2) weeks of which shall be consecutive at the discretion of his Employer, and shall be paid for those four (4) weeks a total of one hundred and sixty (160) hours straight time at his hourly rate prevailing at the time of the vacation.

However, if any such employee shall have been absent from work in excess of four (4) weeks, excluding the prior year's vacation, during the twelve (12) months immediately preceding his scheduled vacation, he shall receive vacation pay equal to sixteen (16) hours for each four (4) weeks worked during the twelve (12) months immediately preceding his vacation, but not in excess of a total of one hundred and sixty (160) hours.

(f) The vacation period will extend from June 1st to May 31st, and every effort will be made to give each employee his choice of time on the basis of length of service. However, where conflicting choices interfere with adequate

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service to a Company's clients, the Company reserves the right to specify the dates to be assigned. .

(g) Vacations cannot be allowed to accumulate from year to year, but must be completed in each vacation period as defined in Paragraph (f) above.

(h) If a designated Holiday falls on any work day during an employee's vacation, such employee will receive either (A) another day off with eight (8) hours straight time pay, or eight (8) hours straight time pay in lieu of such time off, or (B) determination of choice between (A) or (B) to be at the discretion of the employee. However, if the employee selects (A), then the particular day shall be designated at the discretion of the Company.

(i) The vacation allowance provided for in (a), (b) (c), (d) and (e) above shall be considered as being earned on a pro-rata basis through work within the industry as an employee or a "helper-in-training" in good standing and covered by this Agreement, and shall become a vested interest of the employee and all accrued and unpaid vacation pay shall be payable upon termination of employment. Vacation disputes are to be settled by the Joint Union-Management Committee provided for hereinafter in Section (m) below.

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(j) For the purpose of computing vacation earned for a current vacation period, employment during the period from the previous June 1st to May 31st of the current vacation year will be considered, independent of the actual dates of the vacation received.

(k) Full payment for vacation will be made immediately prior to the time the vacation is taken.

(l) A Joint Union-Management Committee is hereby established. Such Committee shall consist of three (3) representatives of the Union and three (3) members of the Executive Committee of the Association. All matters in dispute regarding any provision of this Article VI will be reviewed by such Committee which shall arrange to meet promptly within five (5) working days of receipt of written notice by either the Association to the Union or the Union to the Association. If the

Committee should fail to reach an agreement on any case or any matter in the dispute, the matter will be subject to the arbitration procedures provided for in this Agreement.

ARTICLE VII

WELFARE AND PENSION PLAN

The Company agrees to participate in the existing "Pension, Hospitalization and Benefit Plan of the Electrical Industry" as administered by the Joint Industry Board of the Electrical Industry. However, coverage is limited to the following benefits set forth in the gold-covered booklet dated 1962:

1. The Standard Benefit
2. The Disability Pension Benefit
3. The Supplemental Pension Benefit
4. The Hospitalization Benefit
5. The Surgery Benefit
6. The Serious Injury Benefit
7. The Death Benefit and Pension Premium Benefit
8. The Dental Department Benefit
9. The Medical Department Benefit
10. The Housing Benefit

Effective January 7, 1976, each Company agrees to pay each week to the Joint Industry Board as the Company's sole and total contribution toward the financing of said plan, a sum equal to seven (7%) per cent of the gross weekly production payroll for all of its employees covered by this Agreement.

A 48ARTICLE VIIIPROBATIONARY PERIOD

(a) New employees coming into the elevator industry and becoming subject to the terms of this Agreement shall be considered on trial or probation for a period of six (6) months from the date they are first hired in the elevator industry. During such six (6) months probationary period their original Employer or any subsequent Employer may terminate their employment and such termination of employment shall be at the sole discretion of the Company who is their Employer.

(b) Upon transfer to a different job classification, a regular employee shall be considered on probation for a period of three (3) months, during which time he may be assigned to still another classification or reassigned back to his former job, all at the sole discretion of his Company.

Such transferee will be paid at the regular rate including annuity where required for the probationary job while in the probationary status. If a probationer is downgraded by his Company within the three (3) months period, he cannot within one (1) year be up-graded again except on a permanent (non-probationary) basis unless mutually agreeable to the man, the Company and the Union.

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(c) Upon completion of the probationary periods specified above, the employee shall acquire length of service status in the job classification in which he had successfully completed his probationary period. The length of service status shall revert to the date of hire or transfer, whichever may be the case.

(d) The Company will give preference to present employees in making promotions to higher rated jobs, but is not restricted from hiring employees from the outside for any job whatsoever if it finds that no suitable candidates are available among the present personnel after first applying to the Joint Employment Office for a period of seventy-two (72) hours exclusive of Saturdays, Sundays or Holidays.

(e) The Company will notify the Union, in writing, of all reclassifications, upward or downward, probationary or non-probationary, within five (5) days of the effective date of such reclassifications.

ARTICLE IX**LAY-OFFS - REHIRING - LEAVE OF ABSENCE**

(a) When volume of work available necessitates lay-offs and/or rehiring after lay-off, ability and efficiency

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in performing the available work shall be the first governing factor and where ability and efficiency in performance appear to be relatively equal as between two or more employees, then length of service will govern.

(b) Whenever there is a decrease in the working force, employees who have served in a lower skilled classification of the job to which they are assigned at the time of the lay-off, shall be credited to the lower skilled classification with their length of service in that classification plus their length of service in the job to which they are assigned at the time of the lay-off.

(c) The Company shall notify the Shop Steward of new hires, lay-offs or rehires. Whenever possible a written one (1) week notice of lay-off shall be given to the employee and his shop steward.

(d) A Company may, for valid reasons, with the approval of the Union, grant an employee, on written application, a leave of absence without pay not to exceed thirty (30) calendar days. Leaves of absence obtained under false pretenses will be sufficient cause for discharge. Any employee on a leave of absence who accepts employment without permission of the Company shall be considered to have abandoned his job.

A 51ARTICLE XLENGTH OF SERVICE

(a) Length of service, where applicable herein, shall be determined on a job classification basis.

(b) Length of service will be broken if an employee:

1. Quits of his own accord.
2. Is discharged for cause.
3. Does not return to work within five days when recalled after a lay-off or immediately following a vacation or approved leave of absence, unless he is unable to do so because of illness or for other similar good and sufficient reason and has notified his Company in writing within two (2) working days.
4. Is laid off for six (6) consecutive months.

(c) A person who was employed in a job classification within the bargaining unit covered by this Agreement and is subsequently transferred to a job position outside the bargaining unit shall retain during his continuous employment his length of service credit for the job classification within the unit in which classification he worked prior to transfer plus his length of service credit for the period of his service with the Company in the position out-

side the bargaining unit.

ARTICLE XI

GRIEVANCE PROCEDURE

Nothing in this section shall preclude the right of any individual employee to take up his grievance direct with his immediate supervisor, his department head, or the President, if he so chooses. However, when an employee has a difference or dispute as to the interpretation or application of any provision of this Agreement, there shall be no suspension of work on account of such difference, but an earnest effort shall be made to settle the question immediately by means of the procedure herein described, and no other method of adjustment will be resorted to.

1st step. Within five (5) working days after a grievance arises the employee (with or without his Shop Steward as he may choose) shall discuss the matter with his immediate supervisor who shall reach a decision within the next two (2) working days, unless an extension is mutually agreed upon in writing.

2nd step: In the event a satisfactory settlement has not been reached or decision made, within the time specified in the 1st step, the employee (with his Shop Steward or Business Representative) shall take up his grievance

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within two (2) additional working days with his department head. The department head shall reach a decision within the next three (3) working days, unless an extension is mutually agreed upon in writing.

3rd step: In the event a satisfactory settlement has not been reached or decision made by the department head, within the time specified in the 2nd step, the employee (with Shop Steward or Business Representative) shall within two (2) additional working days present his grievance direct to the President who will review the case with a view of arriving at a mutually satisfactory settlement. If no mutually satisfactory settlement can be arrived at within five (5) working days, the matter may be referred by either party to arbitration as hereinafter provided.

In an emergency, Step #1 may be taken up during regular working hours and time thus lost by the employee and his Shop Steward will be borne by his Company unless, in its opinion, such lost time becomes unreasonable. Otherwise, all grievances will be considered and acted upon outside of regular working hours and no time thus spent by the employee and/or his Shop Steward will be borne by his Company.

**Arbitration
Clause**

If a discharged employee claims he has been discharged without just cause, his case will be handled through the grievance procedure described above. Should such an employee be reinstated due to a decision that he was discharged without just cause, he shall be compensated for the time lost not to exceed eight (8) hours per day or forty (40) hours per week at his straight time hourly rate.

Any grievance which is not presented or processed within the time limits set forth in this section, shall be deemed to have been settled to the mutual satisfaction of the aggrieved employee and his Company.

ARTICLE XII

ARBITRATION

Any grievance arising out of a difference or dispute as to the interpretation or application of any provision of the Agreement which has not been satisfactorily settled through the grievance procedure prescribed herein, shall be referred to a Board of Arbitration consisting of three (3) men.

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Within two (2) working days after the decision of the President of a Company on the grievance, the party seeking arbitration shall notify the other party in writing to that effect and at the same time state in writing the facts involved in the grievance.

The Board of Arbitration shall be chosen as follows:

Within five (5) working days after the receipt of the Notice of Arbitration referred to above, one member shall be appointed by the Company and one member shall be appointed by the Union. Within five (5) working days of their appointment, these two shall meet and choose the third member who shall act as Chairman of the Board of Arbitration. If they fail to agree on the third member, such third member shall be appointed by the American Arbitration Association in accordance with its established procedure in such cases.

The Board of Arbitration shall not by any decision or award either add to or subtract from any of the terms or conditions of this Agreement.

Any fees or other expenses or attorneys, representatives or of the arbitrator appointed by the respective parties shall be borne by the party so appointing them. Any fees or expenses of the third arbitrator shall be borne by the parties equally.

A 56ARTICLE XII-ASCREENING BOARD

A joint labor-management screening board shall be established as soon as possible consisting of five (5) members appointed by the Union and five (5) members appointed by the Elevator Industries Association, Inc. At any meeting for the transaction of any business by the board, the presence in person of at least four (4) members shall be necessary for a quorum of which two (2) must be from the Elevator Industries Association, Inc. and two (2) from the Union. At any meeting of the Board, there shall be an equal number present on both sides so that the number of votes cast shall be divided evenly between the Union and management. Additional members from either side may sit in, but shall not vote. For the purpose of conducting a hearing or investigation, the board may designate any number not less than two (2) to conduct same. In any such hearing or investigation, no member of the board shall sit if he is associated as an employee or a member of management in the shop which is a party to an issue brought before the board.

The function of the board shall be to determine issues which may arise concerning job classification or unsatisfactory Employer attitude, but it is not intended that the board shall replace the grievance and arbitration pro-

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ceedings hereinabove provided for.

The board shall elect its own chairman and make such procedural rules, by majority vote, and maintain such records as it may deem necessary for the proper conduct of its business including the appointment by majority vote, or an umpire to determine any issue upon which the board may be evenly divided. The board or any member or other person designated by it may conduct hearings and/or personal investigations. Attorneys may be excluded by the board, but each party shall be given a fair opportunity and reasonable time to prepare and present proofs, including expert testimony by any person or employee from the shop involved or elsewhere. The management of the shop involved may send any person in the shop or associated with it to represent it in such hearing or investigation.

Issues affecting classification and employee attitude are defined as follows:

(a) Job Classification: If any Union Member shall feel that he is not classified in the proper job classification referred to in Article XIX for which he feels qualified, and if reasonable attempts to resolve the matter between the employee, his Employer and/or the Union have been unsuccessful, then on written request of their employee or the Employer the board shall inquire into the matter as above provided for

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and its decision shall be final. (However, the screening board's jurisdiction shall not include other contract provisions referring to job classification.) If the board rates the employee at a higher classification than the one in which he is being employed, then the Employer shall immediately raise the employee to the higher classification or else the employee shall be free to leave the employment without loss of any seniority, vacation or other rights and take a job at the higher pay rate anywhere in the industry.

(b) Unsatisfactory Employee Attitude: If a Company feels that any employee has manifested an unsatisfactory employee attitude in matters of absenteeism, tardiness, irresponsibility, surliness or other conduct falling short of good job performance for which the Company does not desire to resort to dismissal, upon written request of the Company, the board shall inquire into the matter and if it be determined by the board that the charge is valid, the board shall reprimand the employee and shall publish its findings.

ARTICLE XIIIUNION ACTIVITY

No employee shall engage in solicitation or other Union activity of any kind (except as may be specifically

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permitted herein) during working hours or on his Company's premises, without written consent of his Company. Any violation of the clause on the part of (1) Union officials shall constitute a breach of this Agreement, or (2) on the part of any employee, whether or not an official of the Union, shall constitute just cause for disciplinary action, which may include discharge.

ARTICLE XIVBULLETIN BOARD

Each Company shall place a bulletin board in its shop for the exclusive use of the Union for posting notices which are to be restricted to notices of (a) Union recreational and social affairs, (b) Union meetings, (c) Union elections and (d) Union appointments and results of elections.

All such notices shall bear the signature of a Union Officer or Union Shop Steward.

A copy of each such notice shall be delivered to the Secretary of the Company or his designee a reasonable time before posting.

No-Strike Clause

ARTICLE XV

NO STRIKE - NO LOCKOUT

The employees recognize that the value and security of their jobs depend to a large degree upon the ability of their Companies to maintain a proper competitive position in the industry and to that end agree:

(a) To make an honest and conscientious effort to eliminate waste and increase their efficiency in their respective jobs and

(b) That there shall be no strike of any kind, including slowdowns, sit-down, stay-in, walk-out, boycott, picketing or work stoppage during the term of this Agreement. Any violation (1) on the part of the Union officials shall constitute a breach of this Agreement or (2) on the part of any employee, whether or not an official of the Union, shall constitute just cause for disciplinary action, which may include discharge.

Each Company pledges that there shall be no lock-out during the term of this Agreement.

ARTICLE XVI

UNION MEMBERSHIP

All employees employed by the Company who are members

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of the Union on the date of the signing of this Agreement, shall as a condition of employment remain members in good standing in the Union during the term of this Agreement. All other employees shall as a condition of employment be or become members of the Union the thirty-first (31st) day following the effective date of this Agreement, or the thirty-first (31st) day following the beginning of their employment, whichever is later.

Each Company will apply to the Joint Employment Office for additional employees when same are needed. If the Joint Employment Office cannot supply an employee or employees satisfactory to the Company within seventy-two hours, exclusive of Saturday, Sunday or holidays, the Company may hire employees from whatever source available. The Employer will instruct employees so hired to report to the Union on the first Monday evening after the date of hire for the purpose of obtaining a temporary card. Although men shall be hired, when available, through the Joint Employment Office, neither the Union nor the Employer shall in such hiring give any preferential treatment as between Union and non-Union men seeking employment.

ARTICLE XVIICHECK-OFF

(a) Upon receipt of written authorization for the period of this Agreement, or any extension thereof, or until termination of the Agreement by breach, whichever occurs

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sooner, in the form to be approved by The Elevator Industries Association, Inc., from individual employees covered by this Agreement, each Company will deduct from the pay of such employees authorizing the deduction a sum not to exceed the monthly membership dues of the Union. The Union shall notify each Company in writing as to the exact amount of monthly dues to be deducted and any changes thereof during the term of this Agreement.

(b) The Union shall indemnify and save each Company harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken or not taken by the Company in reliance upon individual authorizations furnished to the Company by the Union for the purpose of complying with any provision of this Article XVII; provided, however, that the Company will immediately notify the Union of any claim demand, suits or other forms of liability permitting the Union, through its Attorney to defend such claim, demand suits or other forms of liability, and cooperate with the Union in the defense of such claims, demand suits or other forms of liability.

ARTICLE XVIIIMANAGEMENT'S RIGHT TO MANAGE

Nothing contained in this Agreement is to be construed as a limitation of the right of each Company to

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exercise the regular and customary functions of management.

ARTICLE XIX-A

JOB CLASSIFICATION AND WAGES

(a) The terms and conditons set forth in this Article shall apply only to elevator job classifications, as provided in subparagraph (b) hereof. Job descriptions shall be as defined in EXHIBIT 'A', made part of this agreement subject to such changes or amendments and corrections there-to as may be made by mutual agreement in writing between the parties.

(b) The minimum hourly rates of pay for the job classifications listed below shall be effective on the dates indicated:

<u>Job #</u>	<u>1-7-76</u>	<u>11-1-76</u>	<u>10-31-77</u>
1. "A" Elev. Repair Mechanic	\$8.27	8.85	9.51
2. Elev. Mach. Mechanic	7.91	8.46	9.09
3. "A" Elev. Winder	7.91	8.46	9.09
4. "B" Elev. Repair Mechanic	7.48	8.00	8.60
5. "A" Elev. Main. Mechanic	7.91	8.46	9.09
6. "A" Elev. Mach.	7.48	8.00	8.60
7. "B" Elev. Main. Inspector	7.29	7.80	8.39
8. "B" Elev. Mach.	6.49	6.94	7.46
9. "A" Elevator Helper	6.13	6.56	7.05

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10.	"B" Elevator Benchhand	6.13	6.56	7.05
11.	Elevator Driver Helper	6.24	6.68	7.18
12.	Elevator Stockroom Clerk	5.68	6.08	6.54
13.	Hydraulic Elev. Mechanic	8.39	8.98	9.65

(b) (1) All other Hydraulic classifications and pay rates shall be the same as numbers 2 through 12, above.

(b) (2) A man assigned by his Employer in a supervisory capacity over five or more men shall be paid 50¢ an hour above his job classification rate. Such a man shall be known as foreman. The duties of the foreman shall include the obligation not only to supervise the men under him, but also to make diligent, full and prompt report to his Employer concerning the work of the men under him and particularly the irregularity or dereliction of duty of any man under him including, but not limited to, lateness, shirking, sobriety, etc. Notwithstanding this or any other provision of this contract, no supervisory employee or foremen shall be permitted to work with tools on a job unless he be a member of the Union in good standing.

(c) Any employee employed by a Company in Job Grade 4 (Grade B Elevator Repair Mechanic) or Job Grade 5 (Grade B Elevator Maintenance Inspector) shall be considered for upgrading after two (2) years of service in such classifications, and if deemed qualified by his Employer shall be

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reclassified to Job Grade 1 (Grade A Elevator Repair Mechanic) in the case of a Job Grade 4 employee, and to Job Grade 5 (Grade A Elevator Maintenance Mechanic) for a Job Grade 7 employee. If his Employer fails to upgrade such employee, the Union may submit the matter to the Screening Board, as provided in Article XII-A. In the event said Screening Board shall be evenly divided, then the matter shall be submitted for final and binding decision by an impartial chairman, to be designated by the parties to this Agreement. Any decision of said Screening Board or impartial chairman upgrading an employee shall become effective within fifteen (15) days from the date of notification to the Employer of the action of said Board or impartial chairman.

(d) Any employee who is not upgraded after application to the Screening Board may not reapply for at least twelve (12) months from the date of the action by the Screening Board or the impartial chairman.

(e) Rates of pay for Helpers-in-Training/Apprentices shall be determined on the basis of percentage as set forth in Schedule "A" attached.

(f) The rates of pay as determined under Schedule "A" attached shall be automatically granted each employee on the anniversary dates indicated unless the Union has specifically

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advised the Employer that that employee has not attended Apprenticeship School diligently and continuously.

(g) After completion of the Apprenticeship Training Program, a Helper-in-Training/Apprentice shall be placed by his Employer into Job Grade 4 or 7 or 8 or 10, if there is a vacancy in one of said Job Grades and the Employer decides that that employee is qualified for such a vacancy. In the event that the Employer has no position vacancy in any of the aforesaid Job Grades or decides that the Helper-in-Training/Apprentice is not qualified for any of said job classifications, then the Helper-in-Training/Apprentice will be placed in Job Grade 9.

(h) The Apprenticeship Training Program shall be supervised by a joint committee consisting of an equal number of representatives to be designated by the Company and the Union respectively.

(i) Rates of pay for newly hired Elevator Stockroom Clerks shall be determined on the basis of percentages as set forth in Schedule "B" attached. After thirty (30) months' employment, any such Elevator Stockroom Clerk shall receive the rate set forth in Paragraph (b) above for Elevator Stockroom Clerk (Job Classification 12).

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(j) Any helper who is assigned as a driver for four (4) or more hours in any work day shall be paid the "elevator driver helper" rate for that day.

(k) Helpers-in-Training/Apprentices and "A" Elevator Helpers (Job Classification #9) shall not be permitted to work alone except under the supervision of a mechanic on the route for the purpose of cleaning or painting elevator equipment giving due regard to safe working conditions. This shall not limit the work a helper may perform when working with a mechanic.

(l) Mechanics shall be required to provide tools listed on Schedule "C" at no cost to the Employer.

ARTICLE XIX-B

CONTRACTS WITH OTHER EMPLOYERS

If the Union enters into a contract during the term of this contract with any Employer company, firm or corporation which is in any aspect more favorable to such Employer than the terms of this contract, in such case, the Company may elect to adopt the more favorable provision, in which case, such provision shall be embodied in the terms of this contract. Such election may be given in writing thirty (30) days of notification by the Union to the Company of such more favorable contract.

ARTICLE XX

VIOLATION OF WORKING RULES, ETC.

Local Union 3 is a part of the International Brotherhood of Electrical Workers and any violation or annulment of the Agreement of this or any other Local Union of the International Brotherhood of Electrical Workers by the Employer will be sufficient cause for cancellation of his Agreement after the facts have been determined by the International Office of the Union. The Employer further agrees that he will not sublet, assign or transfer any work covered by this Agreement to any other person, firm or corporation if such subletting, assigning or transfer will cause the loss of work opportunities to employees in the Employer's establishment covered by this Agreement. Any such subletting, assigning or transfer shall be allowable after a mutual determination has been made by the representatives of the parties hereto that such action is not in conflict with the preceding sentence.

ARTICLE XXI

ANNUITY

(a) Every payroll week, each Company shall pay into a Joint Industry Board Annuity Trust Fund the sum of six (6.00) dollars per day for each day of five (5) or more hours actually worked (excluding, however, emergency work performed on Saturdays and/or Sundays) by each of its employees who is employed in any of the following six job classifications only:

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Job #1 - Grade A. Elevator Repair Mechanic
Job #2 - Elevator Machinist Mechanic
Job #4 - Grade B. Elevator Repair Mechanic
Job #5 - Grade A. Elevator Maintenance Mechanic
Job #7 - Grade B. Elevator Maintenance Inspector
Job #13- Hydraulic Elevator Mechanic

(b) Effective November 1, 1976, every payroll week each Company shall pay into the Joint Industry Board Annuity Trust Fund the sum of one (1.00) dollar per day for each day of five (5) or more hours actually worked (excluding, however, emergency work performed on Saturdays and/or Sundays) by each of its employees who is employed in any of the following seven job classifications only:

Job #3 - "A" Elevator Winder
Job #6 - "A" Elevator Machinist
Job #8 - "B" Elevator Machinist
Job #9 - "A" Elevator Helper
Job #10- "B" Elevator Benchhand
Job #11- Elevator Driver Helper
Job #12- Elevator Stockroom Clerk

(c) Effective October 31, 1977 employees in the above classifications (Job #3 9,10,11,12) shall have their Annuity contribution increased by one (1.00) dollar per hour under the same terms as in (b) above to a total of two (2.00) dollars per hour.

(d) Each Company shall submit weekly a list of employees and the amount it is paying for each. Such payments shall be credited to the individual account of each employee so affected.

(e) The Joint Industry Board of the Electrical Industry shall administer the Annuity Plan of the Electrical Industry and the said Annuity Plan and its administration is hereby incorporated as part of this Agreement with the understanding that the employees covered by this Agreement on whose behalf contributions are made shall be participants of the Plan and enjoy the benefits provided thereunder proportionately to the contributions made on behalf, with respect to contributions made by other Employers on behalf of other participants.

ARTICLE XXII

DISCRIMINATION

The Employer and the Union acknowledge and agree to comply with provisions of appropriate Federal, State and Local Legislation dealing with the subject of discrimination.

ARTICLE XXIII

INJURY/ILLNESS

(a) The benefits provided under this Article for Injury on the Job, subparagraph (b) Below, and for Absence

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from Work Due to Illness, subparagraph (c) below, shall not exceed a total of twenty-four (24) hours of pay at straight time rates during any contract year for any employee employed within the industry, except that new employees with less than one year of service within the industry will accrue time for benefits under this Article at the rate of two (2) hours for each completed month of employment. After one (1) year of service an employee can utilize his paid sick leave as needed. Employees who terminate employment and have utilized more than his earned sick leave shall have said over utilization deducted from his final pay check.

(b) In the event an employee covered by this Agreement sustains loss of time due to a physical injury requiring medical attention as a result of an accident on the job, and such absence is so certified by a doctor, then, if such injury is not covered by Workmen's Compensation only because the employee's absence resulting from such injury is less than the statutory period for compensation under that Statute, the Employer agrees to pay such injured employee for the balance of his regular straight time hours lost on the day of the injury plus eight (8) hours paid at straight time rates for the third (3rd) full day of three (3) consecutive days of loss of pay to and following the injury,

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provided, however, that all payments for such injuries shall not exceed a total of twenty-four (24) hours of pay at straight time rates during any contract year for all such separate injuries during that year less any benefits paid under subparagraph (c) below.

(c) An employee covered by this Agreement shall be entitled to pay for absence from work due to illness not to exceed a total of twenty-four (24) hours of pay straight time rates during any contract year, less any benefits paid under subparagraph (b) above, provided, however, that no such employee shall be entitled to such benefit for illness of less than a full work day nor for absence from work due to illness on the day before or the day after any holiday or vacation. An Employer may require any employee to provide satisfactory medical proof before paying for absence due to illness.

(d) In the event an employee is terminated by an Employer, such employee will be entitled to be paid at the time of termination the pro-rata portion, if any, of his unused injury/illness benefit for the period employed by that Employer during that contract year.

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(e) Any portion of said twenty-four (24) hours credit for any injury/illness not used by an employee on the actual payroll at the end of a contract year shall be paid to such employee at his regular straight time hourly rate applicable on the last day of the contract year.

(f) Effective October 31, 1977 all references to twenty-four (24) hours credit in paragraphs (a), (b), (c) (d) and (e) shall be amended to thirty-two (32) hours and the reference to two (2) hours in paragraph (a) shall be amended to two and two-thirds (2-2/3).

(g) It is specifically agreed that such injury/illness payments shall not be considered as compensation or wages for overtime or any other purposes.

ARTICLE XXIVASSOCIATION MEMBERSHIP

(a) All members of the Association at the time of the execution of this Agreement (Exhibit "B") and persons, firms or corporations becoming members thereof subsequent to

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the execution of this Agreement shall be and continue to remain bound by and subject to the terms of this Agreement or any extension or renewal thereof.

(b) Should a member of the Association resign, be suspended or expelled from the Association or its membership terminated for any reason whatsoever during the term of this Agreement or any extension or renewal thereof, such member shall continue to be bound by provisions of the current Agreement when in effect for the term of such Agreement.

APPROVAL

This Agreement is made subject to the approval of the President of the International Brotherhood of Electrical Workers.

Any terminology herein to the contrary notwithstanding, this contract is between the undersigned Association on behalf of its members and Local Union No. 3, International Brotherhood of Electrical Workers.

ARTICLE XXVICAR ALLOWANCE

Effective January 7, 1976 whenever an Employer requests an employee to use his own car in the regular course

(a) Weekly Rate - Where an employee is required by his Employer to use his car on a regular basis from Monday to Friday (8:00 A.M. to 5:00 P.M. daily), the following weekly rates shall be applicable:

All weekly mileage shall be computed from the individual's home or from the city line if he lives outside of New York City and works within the city.

(c) Daily Rate on Saturday, Sunday or Holidays -

Any employee who receives a weekly car allowance and who arranges in advance for the use of his car for emergency

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calls or emergency jobs on a Saturday, Sunday or Holiday, shall be paid the sum of \$7.27 for each such day in addition to all other car allowances. Said \$7.27 shall cover a twenty-four (24) hour period from 8:00 A.M. on any of said days to 8:00 A.M. the following day.

(d) Deductions - Any employee who is entitled to a weekly car allowance, as set forth in paragraph (a) above, shall have \$1.45 per day deducted from said allowance for each day he is absent from work for any reason whatsoever. If he is absent from work for an entire work week (Monday through Friday), such employee shall receive no car allowance for that week. Absence shall mean failure to work for any reason whatsoever and will include but not be limited to absence due to holidays, vacations, sickness/injury leave, leave of absence, etc.

(e) Daily and Night Rate for Employees Not Entitled to Weekly Allowance - If an Employer requires an employee not otherwise entitled to a car allowance to use his car for a particular day or night, said employee shall be entitled to the following allowances:

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(1) Use of car on a Saturday, Sunday or Holiday - \$11.65 for the twenty-four (24) hour period from 8:00 A.M. on any of said days to 8:00 A.M. the following day.

(2) Day rate from 8:00 A.M. to 5:00 P.M. on any other day - \$7.27 per day.

(3) Night rate from 5:00 P.M. to 8:00 A.M. on any other day - \$7.27 per day.

(4) No employee shall be entitled to receive more than \$11.65 for any twenty-four (24) hour period under this provision.

(f) Nothing provided herein shall constitute a basis for reducing car allowances which may be in excess of the rates provided herein at the time of the signing of this Agreement.

(g) Adjustments in Car Allowances:

(1) Effective the first Monday in May 1976 the allowances provided for in paragraphs (a) through (f) above shall be adjusted (increased or decreased) by an amount equal to the percentage difference between the August 1975 and February 1976 Private Transportation Index as prepared by the Bureau of Labor Statistics, Consumer Price Index New York City Average.

(2) Further adjustments in car allowance shall be made on the first Monday in November, 1976, the first Monday of May, 1977, the first Monday of November, 1977 and the first Monday of May, 1978, said adjustments in the allowance provided for in paragraphs (a) through (f) above shall be adjusted (increased or decreased) by an amount equal to the percentage difference between the February to August for November adjustments and August to February for April adjustments in the Private Transportation Index as prepared by the Bureau of Labor Statistics, Consumer Price Index New York City Average.

ARTICLE XXVII

SHOP STEWARDS

The Employer recognizes that there shall be a Shop Steward in each Company. The Shop Steward shall be appointed by the Business Manager in accordance with the provisions of Article IX of the Constitution and By-Laws of Local Union No. 3 IBEW (in effect on October 26, 1975) from among the employees by the Company. Such Shop Steward will perform his normal work assignment and will conduct Union business prior to or after working hours unless otherwise agreed to by mutual agreement between the Union and the Employer.

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Union business shall be defined as the investigation of grievances, Union security problems and safety issues. When appointing a Shop Steward, the Business Manager will select an "A" mechanic of reasonably high qualifications and seniority in the Company, or a "B" mechanic if no "A" mechanic is employed by the Company so that in the event of a layoff the seniority of the Steward will not be a hardship to the Employer.

The foregoing qualifications for the appointment of a Shop Steward shall not effect those Shop Stewards appointed as such by the Business Manager prior to October 26, 1975 who shall enjoy the same protection in seniority as those appointed by the Business Manager after October 26, 1975.

ARTICLE XXVIII

EDUCATIONAL AND CULTURAL TRUST FUND

Effective January 7, 1976 all employers shall remit weekly an amount equal to 1/2 of 1% of their gross weekly production payroll covering all Employees under this Agreement to a Trust Fund established by the Joint Industry Board of the Electrical Industry for Educational, Cultural purposes, subject to the approval of Federal or State authorities having jurisdiction thereof.

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ARTICLE XXIX

JOINT LABOR MANAGEMENT EMPLOYMENT OFFICE

The parties shall maintain a Joint Labor Management Employment Office.

IN WITNESS WHEREOF, this AGREEMENT is signed in New York City this 17th day of January, 1976.

ELEVATOR INDUSTRIES
ASSOCIATION, INC.

By: *Donald H. [Signature]*

President

By: *[Signature]*

Chairman, Negotiating Committee

LOCAL UNION NO. 3,
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO

By: *George Schuch, Jr.*

President

By: *Janet [Signature]*

Asst. Business Manager

By: *[Signature]*

Business Representative

By: *William [Signature]*

Recording Secretary

APPROVED:

International Officer IBEW

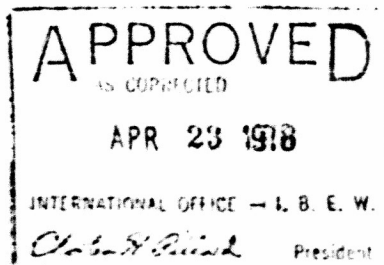


EXHIBIT "A" - JOB CLASSIFICATION DESCRIPTION

GRADE "A" ELEVATOR REPAIR MECHANIC

Repair, modernize and install elevators, where skilled mechanical work (even to close tolerances) and intricate control circuits are involved. Plan and execute difficult mechanical and electrical repairs and installations such as the renewal of worms and gears, the wiring, connecting and testing of controllers and other auxiliary electrical equipment, machine babbitting, thrust renewals, motor and controller removal and replacement, modernization. Considerable judgment to analyze correctly the source of failure and proceed with accuracy and dispatch to completion of repairs, especially in emergency shut-downs. Work in field, usually without immediate supervision. Exercise tact and diplomacy in meeting customers' representatives.

GRADE "B" ELEVATOR REPAIR MECHANIC

Repair elevators where the work is not to such close tolerances or as skillful as required by Class "A". Make general repairs, replacements, and adjustments to all types of elevator equipment of varied construction and design. Some standard operations such as renewal of cables, relining brakes, rebabbitting of light parts such as overhead sheaves. Perform car safety tests. Tolerances moderately close. Some knowledge of fundamental electricity. Work from written or verbal instructions of foreman in the case of repairs of a more advanced nature. Work in field usually without immediate supervision. Exercise tact and diplomacy in meeting customers' representatives.

GRADE "A" ELEVATOR MAINTENANCE MECHANIC

Inspect elevators of all types and makes for both mechanical and electrical conditions. Determine cause of faulty operation and indicate nature and general method of overhaul and repair. Make repairs, adjustments and lubricate as necessary to keep equipment in good operating condition, and shoot trouble. Sketch mechanical details and wiring diagrams as required. Read controller diagrams and circuits, shoot trouble on difficult and complicated jobs referred by lesser skilled mechanics. Check and direct work of lesser skilled mechanics and assist them where necessary. Make further inspection or special investigation on very complicated equipment, recurring troublesome situations on unusual cases as referred by lesser skilled mechanics, or as

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directed by a technical supervisor. Considerable initiative and high degree of ingenuity required to diagnose defective operation of complex equipment, indicate nature or method of overhaul or repair, make detailed report or recommendations for major changes or requirements. Exercise tact and diplomacy in meeting customers' representatives.

GRADE "B" ELEVATOR MAINTENANCE INSPECTOR

Inspect, lubricate, service and shoot trouble on elevator equipment of various types. Determine causes of faulty operation, make repairs and adjustments as needed to keep the equipment in good operating condition. Report nature and requirements for major repairs. Read controller diagrams and circuits, shoot trouble, sometimes referring more difficult jobs to higher skilled mechanics. Make further inspection or special investigation or recurring troublesome situations or unusual cases as directed. Considerable judgment and skill required to determine causes of faulty operations, indicate nature and method of overhaul or repair. Exercise tact and diplomacy in meeting customers' representatives.

GRADE "A" ELEVATOR HELPER

Assist, and work under the instruction of, Grade "A" and Grade "B" Elevator Mechanics. Anticipate to a great degree the sequence of operations and detailed steps to be taken, such as: - having the proper tools and equipment at hand when needed; processing with own part of the work without requiring detailed instructions, etc.; clean machines, collect tools for job, obtain material, assist in mechanical operations, such as dismantling machines and reassembly, prepare babbit metal, replace cables, machine parts, etc. Some judgment to perform work efficiently. Work in coordination with mechanic where errors may cause serious damage or injuries. On some types of work, proceed independently of the mechanic on another part of the same equipment (motor room, shaftway, pit, overhead).

STOCK ROOM CLERK

Handle parts for elevators, motors, electrical equipment, cables, raw metal stocks, tools, rigging, equipment. Receive and store incoming material, tools and equipment. Check or verify with delivery slips. Select and deliver material, tools and equipment on signed requisitions for shop, service, repair or installation work. Cut off raw material to specified lengths. Check equipment returned for repairs. Report

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stock and material shortages. Keep records and perform any necessary clerical work in connection with handling stock room equipment. Take spot and regular inventories as required. Keep work areas clean and in good order.

**Exhibit B to the
Agreement**

EXHIBIT "B"

The following companies are members of the Elevator
Industries Association, Inc. for whom we are signing this
Master Agreement:

Able Elevator & Door Repair Co., Inc.	37 Cooper Square, N.Y., N.Y. 10003.
Admiral Elevator	268 Ashland Place, Bklyn, N.Y. 11217.
American Elevator & Machine Corp.	42-22 Crescent St., L.I.C., N.Y. 11101.
Archer Elevator	801 Second Avenue, N.Y., N.Y. 10017.
Brooklyn & Queens Elevator Co., Inc. (L.K. Comstock)	87-20 Atlantic Ave., Ozone Pk. NY 11416.
Central International Elevator Co., Inc.	226 West 20th Street, N.Y., N.Y. 10011.
Circle Elevator Co.	26 Ninth Avenue, N.Y., N.Y. 10014.
Clifton Elevator Co.	261 Crooks Avenue, Clifton, N.J. 07011.
Dynamic City Center Elevator Associates	181 Duane St., N.Y., N.Y. 10013.
Elevator Associates, Inc.	34 Jumel Place, N.Y., N.Y. 10032.
Elevator Engineering Co., Inc.	215 E. 149th St., N.Y., N.Y. 10051.
Empire Elevator Corp.	178 E. 124th St., N.Y., N.Y. 10035.
Flynn-Hill Elevator Corp.	50-18 Vernon Blvd., L.I.C., N.Y. 11101.
Freer Elevator Co.	79 Mercer St., N.Y., N.Y. 10021.
Gotham Elevator Repair Co.	90 Park Place, Brooklyn, N.Y.
Hailer Elevator Co., Inc.	319 Greenwich St., N.Y., N.Y. 10013.
Higdon Elevator Co., Inc.	67 So. Newman St., Hackensack, NJ 07601.
Hydro-Electric Elevator Co., Inc.	135 West Broadway, N.Y., N.Y. 10013.
Knudson Elevator Corp.	22-05 43rd Avenue, L.I.C., N.Y. 11101.
McGlynn, Hays & Co., Inc.	62 Grand Street, N.Y., N.Y. 10013.
The Maintenance Co., Inc.	10-40 45th Ave., L.I.C., N.Y. 11101.
Marcato Elevator Co., Inc.	44-11 11th Street, L.I.C., N.Y. 11101.
Martin Elevator Co., Inc.	40-18 Crescent St., L.I.C., N.Y. 11101.
Millar Elevator Industries, Inc.	501 West 42nd Street, N.Y., N.Y. 10036.
P.S. Elevator, Inc.	125 Grand Street, N.Y., N.Y. 10013.
Royal Elevator Ind. Corp.	1347 Cromwell Avenue, Bronx, N.Y. 10458
Universal Elevator Co. Inc.	631 West 51st Street, N.Y. N.Y. 10019.
Veemac Elevator Co., Inc.	227 West 17th Street, N.Y., N.Y. 10001.
Vertical Industries	39-02 Bell Blvd. Bayside, N.Y. 11361.

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SCHEDULE A

Rates of pay for Helpers-in-Training/Apprentices as percentage of prevailing rate for Job Grade #9 ("A" Elevator Helper):

<u>1st</u> <u>6 mos.</u>	<u>2nd</u> <u>6 mos.</u>	<u>3rd</u> <u>6 mos.</u>	<u>4th</u> <u>6 mos.</u>	<u>5th</u> <u>6 mos.</u>	<u>6th</u> <u>6 mos.</u>	<u>7th</u> <u>6 mos.</u>	<u>8th</u> <u>6 mos.</u>
55%	60%	65%	70%	75%	80%	85%	90%

SCHEDULE B

Rates of pay for Stockroom Clerks as percentage of prevailing rate for Job Grade #12 (Elevator Stockroom Clerk):

<u>1st</u> <u>6 mos.</u>	<u>2nd</u> <u>6 mos.</u>	<u>3rd</u> <u>6 mos.</u>	<u>4th</u> <u>6 mos.</u>	<u>5th</u> <u>6 mos.</u>
50%	60%	70%	80%	90%

SCHEDULE "C"

TOOL LIST

For Repair Mechanics

- 4 Screwdrivers
- 1 2 lb. Ball Pein Hammer
- 1 set nut drivers
- 1 Gas pliers
- 2 Channell Locks (to 12")
- 1 Needlenose pliers
- 1 diagonals
- 1 linemens pliers
- 1 vise grip
- 1 Adjustable (t 12")
- 1 set open & box wrenches
(to 1")
- 1 ruler
- 1 flashlight
- 1 knife
- 2 chisels
- 1 feeler guage
- 1 12" level
- 1 set Allen Wrenches
- 1 center punch
- 1 drift pin
- 1 tin shears
- 3 files
- 1 pinch bar 15"
- 1 extension cord with double socket
- 1 Stillson wrench 12"
- 1 hacksaw frame

For Maintenance Mechanics

- 4 Screwdrivers
- 1 16 oz. Ball Pein Hammer
- 1 set nut drivers
- 1 Gas pliers
- 2 Channell locks (to 12")
- 1 Needlenose pliers
- 1 diagonals
- 1 linemens pliers
- 1 vise grip
- 3 Adjustable (to 10")
- 1 set open & box wrenches
(to 3/4")
- 1 ruler
- 1 flashlight
- 1 knife
- 1 chisel
- 2 files
- 1 set Allen Wrenches
- 4 sets of jumper cables
- 1 hacksaw frame
- 1 Test lamp

January 7, 1976

LETTER OF UNDERSTANDING

In connection with the recently concluded negotiations between the Elevator Industries Association, Inc. and Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO it is agreed:

- 1) That all employees covered hereunder who were employed on October 26, 1975 and reemployed within a reasonable period of time after January 7, 1976 shall receive two (2) paid holidays in lieu of the named holidays celebrated between October 26, 1975 and January 7, 1976;
- 2) That all employees covered hereunder who were employed on October 26, 1975 and reemployed within a reasonable period of time after January 7, 1976 shall receive the accrual of their vacation credit for the period from October 26, 1976 through January 7, 1976.
- 3) That neither members of the Elevator Industries Association, nor Local 3, IBEW will engage in retaliatory action of any kind against any employee for activities engaged in or attendant to the recent strike.
- 4) That the Joint Committee Supervising the Apprenticeships Training Program shall establish an Apprentice Training Program. The cost of this program shall not exceed 1/2 of 1% of the gross weekly production payroll for each covered employer.

Elevator Industries
Association, Inc.

Local Union No. 3
International Brotherhood
of Electrical Workers, AFL-CIO

By [Signature]
President

By [Signature]

APPROVED
AS CORRECTED

APR 23 1976

INTERNATIONAL OFFICE - I. B. E.

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Exhibit 2

MILLER SERVICE CENTER
MIDDLETOWN, VA. 22645


western union

Milgram®



2-047214F215002 04/02/76 ICS IPPMTZZ CSP NYER
1 2126864500 MGM TDNT NEW YORK NY 0A-02 0513P EST

FELLNER AND ROVINS D. SCHWARZ
230 PARK AVE
NEW YORK NY 10017

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

2126864500 MGM TDNT NEW YORK NY 100 0A-02 0513P EST
ZIP

MR THOMAS VANARSDALE
LOCAL 3 IBEW 150-11 JEWEL AVE
FLUSHING NY 11365

WE HAVE BEEN INFORMED THAT MEMBERS OF YOUR UNION EMPLOYED BY OUR
COMPANY HAVE BEEN INSTRUCTED BY THE UNION TO NO LONGER PERFORM WORK ON
ELEVATORS NUMBER 5, 6, 7 AND 8 AT THE PLAZA HOTEL. WE CONSIDER THIS
WORK STOPPAGE IN VIOLATION OF THE NO STRIKE PROVISIONS OF OUR
AGREEMENT. YOUR CLAIM THAT THIS WORK IS NOT WITHIN THE SCOPE OF WORK
COVERED BY OUR AGREEMENT IS A MATTER SUBJECT TO ARBITRATION. WE DEMAND
THAT YOU IMMEDIATELY RESCIND ANY AND ALL INSTRUCTIONS TO YOUR MEMBERS
TO CEASE THIS WORK AND FURTHER DEMAND THAT YOU SUBMIT THIS MATTER TO
ARBITRATION. WE STAND READY TO SELECT A BOARD OF ARBITRATION.

MILLER ELEVATOR CO
BY YALE CITRIN

17:13 EST

MGMCDNR MGM

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

-----X
MILLAR ELEVATOR INDUSTRIES, INC.,

76 CIV 1441

Plaintiff,

- against -

LOCAL UNION NO. 3, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS,
THOMAS VAN ARSDALE, individually and
as Business Manager of Local 3, JAMES
O'HARA, individually and as Asst.
Business [Manager] of Local 3, JOHN
KROMER, individually and as Business
Representative of Local 3, "JOHN DOE",
"JAMES SMITH", and "JANE ROE",

AFFIDAVIT IN OPPOSITION
TO PLAINTIFF'S
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION

Defendants.

-----X
STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

JOHN KROMER, being duly sworn, deposes and says:

1. I am a Business Representative of defendant,
Local Union No. 3, International Brotherhood of Electrical
Workers, AFL-CIO, who informed the Plaintiff and its employees
on July 29, 1976 that the Union's members would not work on
elevators 5, 6, 7 and 8 at the Plaza Hotel. I make this
affidavit in opposition to the Employer's application for
injunctive relief.

2. The Defendant Union is a labor organization
some of whose members perform repair and maintenance work on
elevators in the New York area. Local No. 1 of the International

Union of Elevator Constructors is a labor organization which performs installation work on elevators in the New York area. Both unions are members of the New York City Building and Construction Trades Council.

3. On or about April 2, 1975, Local No. 1 filed a complaint with the Building and Construction Trades Council alleging that the work being performed by Plaintiff's employees, members of Defendant Union, on elevators 5, 6, 7, and 8 at the Plaza Hotel should be performed by persons represented by Local No. 1. On or about June 13, 1975, the Building and Construction Trades Council referred both unions to the Building Trades Employers' Association (BTEA). Pursuant to the machinery of the Building and Construction Trades Council, BTEA was empowered to hear and determine jurisdictional disputes between the unions belonging to the Building and Construction Trades Council.

4. On or about July 27, 1976, after hearing both unions, BTEA issued a decision which provided that the work on elevators 5, 6, 7 and 8 belongs to Local No. 1. Said decision is attached and marked Exhibit A.

5. In obedience to the mandate of BTEA, Defendant Union advised Plaintiff that its employees would cease to perform any work on elevators 5, 6, 7, and 8 at the Plaza Hotel.

6. Defendant Union believes that its obedience to

the mandate of BTEA is consistent with its obligations under the Collective Bargaining Agreement to perform whatever work is within its jurisdiction.

7. The Plaintiff employs approximately 185 elevator mechanics represented by Defendant Union. The two employees who are refusing to work on the above enumerated elevators, upon information and belief, are performing other work for the Plaintiff. Our work at the Plaza Hotel has been continuing for nearly two years. The mechanics work on only one elevator at a time in each elevator bank, so that elevator service remains unimpeded. It therefore does not appear that the Plaintiff is involved in any emergency situation requiring the intervention of this Court.

8. The Collective Bargaining Agreement's Arbitration Clause Does Not Apply To This Situation. The Collective Bargaining Agreement's grievance procedure and arbitration clause, Articles XI and XII, apply to grievances by employees only, and do not apply to grievances by employers. The grievance procedure, Article XI, makes no mention of grievances by employers and refers only to grievances by employees. The Arbitration Clause in pertinent part reads:.

"Any grievance arising out of a difference or dispute as to the interpretation or application of any provision of the Agreement which has not been satisfactorily settled through the grievance procedure prescribed herein, shall be referred to a Board of Arbitration consisting of three (3) men.

The Board of Arbitration shall not by

any decision or award either add to or subtract from any of the terms or conditions of this Agreement."

Neither the Union or any employee has any grievance against the Plaintiff. The Plaintiff feels aggrieved by the action of the Union. The grievance machinery set forth in Article XI does not apply to this situation. The Arbitration Clause covers only a grievance "which has not been satisfactorily settled through the grievance procedure prescribed herein" and the re cannot apply to this grievance by the Employer.

9. The Union's Abandonment Of All Work On Elevators 5, 6, 7, and 8 Is Not A Strike. During my lifetime in the labor movement, I have learned that a strike is a work stoppage engaged in as a form of economic coercion to force the employer to comply with the union's demands. We have made no demands upon the Plaintiff connected with the refusal to perform work on elevators 5, 6, 7, and 8. My attorney, Donald F. Menagh, Esq., advises me that this is a case of first impression, that never before to his knowledge has a judge been asked to enjoin a union's abandonment of work not connected with any demand, as a "strike", and that no court has ever called such abandonment of work a "strike" or ever has issued injunction against such abandonment of work.

10. The Employer Itself Has Failed To Employ The Contract's Arbitration Machinery. Even if the Union's refusal to work on elevators 5, 6, 7 and 8 were a strike, and even if

such strike constituted a grievance which the contract provided should be resolved by arbitration, there is no arbitrator available to resolve the matter. The Plaintiff has not taken the procedural steps provided in the grievance and arbitration clauses (Articles XI and XII) which eventually result in the designation of a Chairman of the Board of Arbitration. Since it is the Employer which claims to be aggrieved, it is the Plaintiff and not Defendant Union that must seek the arbitration and take whatever procedural steps may be available to it.

11. This Court Should Not Order The Union To "Submit To Arbitration". The Employer has asked this Court to order the Union to "submit to arbitration any and all disputes it may have as to the scope of the work covered by the Collective Bargaining Agreement". The Union believes that there is no dispute here which should be arbitrated or which is covered by the contract's arbitration clause. I am advised by my attorney that the Employer's Memorandum of Law does not cite any authority for the imposition of a court order that either an employer or a union must waive any legal argument it may have in support of its contention that a matter is not subject to arbitration and that no court ever has ordered a union to abandon its legal argument with respect to arbitrability of a dispute.

12. The Collective Bargaining Agreement Does Not Provide For Arbitration Relating To Strikes. Even if the Union's refusal to work on elevators 5, 6, 7, and 8 did

constitute a strike, the Collective Bargaining Agreement does not provide for arbitration as a remedy. The contract's No-Strike Clause, Article XV, in pertinent part reads:

"(b) That there shall be no strike of any kind***. Any violation (1) on the part of the Union officials shall constitute a breach of this Agreement or (2) on the part of any employee, whether or not an official of the Union, shall constitute just cause for disciplinary action, which may include discharge."

Nowhere does the No-Strike Clause state that the Arbitration Clause is applicable to strikes.

13. It Appears That The NLRB Has Jurisdiction Here.

I am informed that during the last days of June, 1976 a Mr. Connolly, a Business Representative of Local No. 1, visited the premises of the Plaza Hotel and during the course of his conversations, with specific reference to elevators 5, 6, 7, and 8, discussed the effect of labor difficulties at the Plaza Hotel if Local No. 1 were not given the installation work on said elevators. I am advised by my attorney, Donald F. Menagh, Esq. that any conversation of a coercive nature designed to require the assignment of work to employees in one union or craft rather than another union or craft gives rise to a jurisdictional dispute within the meaning of §8(b)(4)(D) of the Taft-Hartley Act. I am further advised that if such charge is filed with Region 2 of the NLRB, the Regional Director, if she has reason to believe the charge true, would be obligated promptly

to apply for preliminary injunctive relief to the United States District Court for the Southern District of New York--whether or not the coercion were successful and whether or not the Union engaged in picketing.


14. The Harm To Defendant Union If Its Members Resumed Work At Elevators 5, 6, 7, and 8 Would Exceed The Harm To The Plaintiff Caused By The Refusal To Perform That Work.

As stated in Yale Citrin's moving affidavit, the Employer has been working on the Plaza Hotel elevators since November, 1974. Its work is far from complete. Since only one elevator at a time was worked on in each elevator bank, including elevators 5, 6, 7, and 8, the sense of haste, emergency and imminent disaster which the Plaintiff seeks to convey to this Court through its legal papers is unjustified.

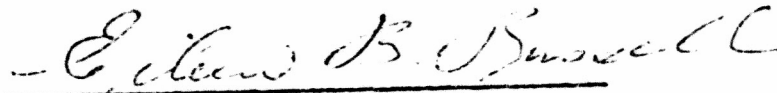
15. Local Union No. 3 cannot properly function as a building trades union in New York City unless we comply with the grievance machinery for settlement of jurisdictional disputes established by the New York City Building and Construction Trades Council. Defendant Union therefore must comply with the order of BTEA, Exhibit A. On October 1, 1973 because we refused to comply with a prior order of BTEA, Local Union No. 3 was suspended from membership in the New York City Building and Construction Trades Council. Local Union No. 3's recent reinstatement was accompanied by an understanding that Local Union No. 3 would comply with all valid decisions of the Building

Trades Employers' Association arrived at pursuant to the Jurisdictional Disputes Settlement Procedure of the Building and Construction Trades Council of Greater New York.

16. If the refusal of two employees to perform work on an elevator did constitute a strike, it would hardly be the type of strike which would justify the finding that the Employer has suffered irreparable harm and would justify the imposition of injunctive relief by this Honorable Court.


John Kromer

Sworn to before me this
10th day of August, 1976


Notary Public

EILEEN B. RUSSELL
Notary Public, State of New York
No. 03-2405050
Qualified in Bronx County
Commission Expires March 30, 1977

BUILDING TRADES EMPLOYERS ASSOCIATION

OF THE CITY OF NEW YORK

ARTHUR T. GAFFNEY
PRESIDENT
JAMES M. WATTERS, JR.
VICE PRESIDENT
LESLIE V. SHUTE
SECOND VICE PRESIDENT
JOSEPH P. CLARKE
THIRD VICE PRESIDENT

711 THIRD AVENUE
NEW YORK, N. Y. 10017
AREA CODE 212
697-2860

H. EARL FULLILOVE
CHAIRMAN, BOARD OF GOVERNORS
THOMAS F. CARTY
TREASURER
WILLIAM A. CANAVAN
SECRETARY

July 27, 1976

Mr. Thomas Van Arsdale, Business Manager
Electrical Workers Local Union No. 3
158-11 Jewel Avenue
Flushing, N.Y. 11365

Dear Mr. Van Arsdale:

This is to inform you that the Executive Committee rendered the following decision:

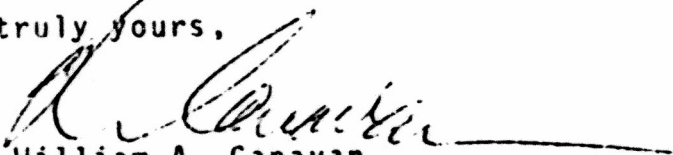
112-5g

--New Elevator, using existing rails, installation of

Elevator Constructors Union, Local 1 and Electrical Workers Union, Local 3 -- Plaza Hotel, New York City, New York.

The Executive Committee finds that the referenced installation, elevators 5, 6, 7 and 8, is covered by Decision 112-4g and is, therefore, the work of the Elevator Constructors Union, Local 1. -- Decision of the Executive Committee, July 27, 1976.

Very truly yours,


William A. Canavan
Secretary

WAC:mb

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

----- x

MILLAR ELEVATOR INDUSTRIES, INC., :
 : 76 Civ. 1441
Plaintiff, :
 :
-against- :
 :
LOCAL UNION NO. 3, INTERNATIONAL :
BROTHERHOOD OF ELECTRICAL WORKERS, :
THOMAS VAN ARSDALE, individually and :
as Business Manager of Local 3, JAMES :
O'HARA, individually and as Asst. Busi- :
ness of Local 3, JOHN KROMER, indivi- :
dually and as Business Representative :
of Local 3, "JOHN DOE", "JAMES SMITH", :
and "JANE ROE", :
 :
Defendants. :
 :
----- x

On reading and considering the petition of Millar Elevator Industries, Inc., duly verified on the 9th day of August, 1976, the affidavit of Carl A. Schwarz, Jr., verified the 9th day of August, 1976, and the affidavit of Harvey Kaplan, verified the 6th day of August 1976, and upon all the proceeding heretofore had herein, it is

ORDERED, that Local Union No. 3, International Brotherhood of Electrical Workers, Thomas Van Arsdale, James O'Hara and John Kromer be and appear in their own proper persons before

Judge Weinstein
this Court at 10 AM, on the 13 day of August, 1976. *

*Changed to August 11th, 1976, 9 AM at Brooklyn,
on writ motion at request of Judge Weinstein.*

8/11/76 10 35 AM

*151 CROSBY C PATT.
0305*

* See preceding page

at 10:00 A.M., of said day, or as soon thereafter as counsel can be heard, to show cause, if any they have, why they and each of them should not be punished for contempt of court for violating and disobeying the orders of this Court entered in the office of the Clerk thereof on the 5th day of August, 1976; ordering said defendants, their officers, agents and employees, and all persons acting in concert or participation with them, be restrained, prohibited and enjoined from in any manner or by any means, directing, calling, authorizing, inducing, instigating, constituting, continuing or engaging in any strike or other concerted slowdown or work stoppage, or concerted refusal to report for work or to accept or perform work assignments of overtime, or any other concerted work stoppage, by or among plaintiff's employees, or other interference with plaintiff's usual operations.

Service of this order may be made upon defendants by serving a copy thereof and a copy of the petition and accompanying affidavit upon Menagh, Trainor & Rothfeld, for said defendants, or by personal service thereof upon said defendants, or by sending a copy of such order and a copy of

A 100

the petition and affidavit by registered mail to said defendants at the offices of Local Union No. 3, 158-11 Jewel Avenue, Flushing, New York.

Issued at Brooklyn, New York, this 10th day of August 1976 at the United States District Court, at 9:55 A.M.

/s/ GEORGE C. PRATT
Judge, United States District Court

Upon full trial of the issues the case is dismissed. The Court finds that the dispute is not sufficiently arguably arbitrable to warrant an injunction. The Temporary Restraining order is extended to the next motion day of the Court & Appeals, Second Circuit, so that the parties may seek a stay or other relief. The clerk will close the case.

So ordered

Jack B. Weinstein

Aug 12, 1976.

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

----- x

MILLAR ELEVATOR INDUSTRIES, INC.,	:	76 Civ. 1441
Plaintiff,	:	
-against-	:	
LOCAL UNION NO. 3, INTERNATIONAL	:	PETITION FOR ORDER TO
BROTHERHOOD OF ELECTRICAL WORKERS,	:	<u>SHOW CAUSE</u>
THOMAS VAN ARSDALE, individually and	:	
as Business Manager of Local 3, JAMES	:	
O'HARA, individually and as Asst. Busi-	:	
ness of Local 3, JOHN KROMER, indivi-	:	
dually and as Business Representative	:	
of Local 3, "JOHN DOE", "JAMES SMITH",	:	
and "JANE ROE",	:	
Defendants.	:	
-----		-x

Millar Elevator Industries, Inc., your petitioner,
respectfully shows to this court:

1. Petitioner is the plaintiff in the above-
entitled cause.

2. On August 5, 1976 at OR about 10:00 A.M., an
order was duly entered herein directing defendants, their
officers, agents and employees, and all persons acting in con-
cert or participation with them, be restrained, prohibited
and enjoined from in any manner or by any means, directing,
calling, authorizing, inducing, instigating, constituting, con-
tinuing or engaging in any strike or other concerted slowdown

or work stoppage, or concerted refusal to report for work or to accept or perform work assignments of overtime, or any other concerted work stoppage, by or among plaintiff's employees, or other interference with plaintiff's usual operations, all of which will more fully appear from a copy of such order annexed and marked, "Exhibit A".

3. Norman Rothfeld, a member of the firm of Menagh, Trainor & Rothfeld, appeared before Judge Pratt on August 5, 1976 at the hearing of the Motion for Temporary Restraining Order and consented on behalf of the defendants to the Order. Rothfeld endorsed his consent on the copy of the order that is on file with the Clerk of the Court.

4. A copy of said Order and a copy of the Verified Complaint upon which it is made was personally served upon Local 3, and the defendants on August 5, 1976 by Harvey Kaplan, as more fully appears from the affidavit of service, a copy of which is attached hereto and marked "Exhibit B".

5. Upon being informed that the order had been served on the Union by plaintiff's attorneys, Yale Citrin notified the men on the job and told them that they would be required to work on elevators 5, 6, 7 and 8. Owing to the fact that it was at that time late in the afternoon, no additional work was performed on August 5th.

6. The men refused to work on elevators 5, 6, 7 and 8 stating that they would not work on that job until they received an O.K. from the Union. No work was performed by them on this day.

7. At approximately 4:00 p.m. on August 6th, the defendant, John Kromer, appeared at the job site and told the Local 3 members working on the job that they were not to perform any work on elevators 5, 6, 7 and 8.

8. On August 9th, at approximately 1:00 P.M. Yale Citrin, the President of Millar Elevators Industries, Inc., personall gave copies of the order of this court to Anthony Nici and told him that he was to begin working on elevators 5, 6, 7 and 8. He refused, and in the presence of Yale Citrin called the Union. He stated that he spoke to the defendant, John Kromer. Nici told him that he had been served with a copy of the order. Kromer told him to go home.

Wherefore, petitioner prays that this Court issue a rule upon the defendants, ordering defendants directing them to appear before this Court, to show cause, if any, they have why they should not be punished for violating said injunction.

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

Yale Citrin, being duly sworn, deposes and says;

I am the President of Millar Elevator Industries,
Inc., a defendant in this action. I have read the foregoing
Petition and know the contents thereof; the same is true to
my knowledge, information and belief.

Yale Citrin

Sworn to before me
August 9, 1976

Notary Public

CARL A. SCHWARTZ, JR.
Notary Public, State of New York
No. 30368272 - Nassau County
Qualified in New York County
Term Expires March 30, 1977

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

----- x

MILLAR ELEVATORS INDUSTRIES, INC.,	:	76 Civ. 1441
Plaintiff,	:	
-against-	:	<u>AFFIDAVIT OF PERSONAL SERVICE</u>
LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, THOMAS VAN ARSDALE, individually and as Business Manager of Local 3, JAMES O'HARA, individual and as Asst. Business Manager of Local 3, JOHN KROMER, individually and as Business Representative of Local 3, "JOHN DOE", "JAMES SMITH", and "JANE ROE",	:	
Defendants.	:	

----- x

STATE OF NEW YORK)	
	:	ss.:
COUNTY OF NEW YORK)	


HARVEY KAPLAN, being duly sworn, deposes and says:

I am not a party to this action, am over the age of 18 years and reside at 299 Mt. Hope Boulevard, Hastings, New York.


On August 5, 1976, deponent served the within Summons, Complaint, Order to Show Cause with Temporary Restraining Order and Surety Bond No. 2475192 upon Local Union No. 3, 158-11 Jewel Avenue, Flushing, New York by serving the offices of defendants, Room 401, office of Thomas Van Arsdale, a receptionist refusing to give her name, red hair, glasses, 45 years old, weight 145, height 5'5", offices of James O'Hara

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and John Kromer, room 402, receptionist, Grace Vendwinglo,
accepted two copies, brown hair, 45 years old, weight 130,
5'5", wore glasses.


HARVEY KAPLAN

Sworn to before me
August 6, 1976


Notary Public

JOHN A. [unclear]
Notary Public, State of New York
County of [unclear]
My Comm. Expires March 30, 1977

Exhibit to Petition -- Order to Show Cause of
Hon. George C. Pratt,
dated 8/5/76

see p. 16 supra

A 108

Exhibit to Petition -- Undertaking on Injunction

see p. 23 supra

A 109

Exhibit to Petition -- Summons

see p. 5 supra

Exhibit to Petition -- Verified Complaint
see p. 6 supra

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
MILLAR ELEVATOR INDUSTRIES, INC., :

-against- : 76-C-1441

LOCAL UNION NO. 3, :
INTERNATIONAL BROTHERHOOD OF :
ELECTRICAL WORKERS, :

Defendant. :

-----X
United States Courthouse
Brooklyn, New York

August 12, 1976
2:00 p.m.

B e f o r e :

HONORABLE JACK B. WEINSTEIN, U.S.D.J.

RAYMOND P. STALKER
ACTING OFFICIAL COURT REPORTER

Appearances:

MESSRS. FELLNER & ROVINS
Attorneys for Plaintiff

BY: CARL SCHWARTZ, ESQ.
Of Counsel

NORMAN ROTHFELD, ESQ.
Attorney for Local 3

ROBERT C. COHEN, ESQ.
Attorney for Local 1

1
2 THE CLERK: Millar Elevator Industries v.
3 Local Union No. 3, International Brotherhood of
4 Electrical Workers.

5 MR. SCHWARZ: We're ready to proceed, your
6 Honor.

7 THE COURT: Call your witness.

8 MR. SCHWARZ: Your Honor, we would call
9 Yael Citrin to the stand.

10 Y A E L C I T R I N , called as a witness, having
11 been first duly sworn by the Clerk of the Court,
12 took the stand and testified as follows:

13 THE CLERK: State your name for the record.

14 THE WITNESS: Yael Citrin.

15 DIRECT EXAMINATION

16 BY MR. SCHWARZ:

17 Q Mr. Citrin, by whom are you employed?

18 A Millar Elevator Industries, Inc.

19 Q And are you the President of that company?

20 A Yes, I am.

21 Q And is Millar Elevator Industries in -- or
22 could you tell us the business in which Millar Elevator
23 Industries is engaged?

24 A Yes, sir. We work in existing buildings through-
25 out New York City, primarily in Manhattan, and we are in

1 the business of maintaining, repairing, converting to
2 automatic operation and installing new elevators.

3 Q And how long has Millar been in that business,
4 sir?

5 A We've been in the business since 1959 at which
6 time we purchased a company whose going business went back
7 to 1934 or '35.

8 Q Does Millar recognize a union as a collective
9 bargaining agent of its employees that are engaged in the
10 business that you have just described?

11 A Yes, we have -- we do.

12 Q What is the name of that union?

13 A Local 3 of the IBEW.

14 Q Is that the defendant in this case?

15 A Yes, it is.

16 Q Mr. Citrin, how long has Millar recognized
17 Local 3 as the bargaining agent for these employees?

18 A Since the inception of our company, which is
19 1959, and then prior to that, the company's assets that we
20 purchased as long back as I can recall, since the beginning,
21 I think, of IBEW which I think goes back into the '40s.

22 Q Is there presently a collective bargaining
23 agreement between Millar and Local 3?

24 A Yes, sir.
25

1
2 MR. SCHWARZ: May I ask that this document be
3 marked as Plaintiff's Exhibit 1 for identification?

4 THE COURT: Mark it. There is no objection,
5 is there?

6 MR. ROTHFELD: No.

7 THE COURT: In evidence.

8 THE CLERK: Agreement received in evidence as
9 Plaintiff's Exhibit 1.

10 Q Mr. Citrin, was this contract in effect on
11 August 5, 1976?

12 A Yes, it was.

13 Q This is the document which we have marked as
14 Plaintiff's Exhibit 1 in evidence. It is the same document
15 which is Exhibit 1 to your affidavit submitted in support
16 of the temporary restraining order in this action?

17 A Yes, it is.

18 Q Does Millar have a contract with the Plaza
19 Hotel in New York City?

20 A Yes, it does.

21 Q Would you please describe the nature of that
22 contract?

23 A All right. The Plaza Hotel entered into a
24 series of contracts with us whose sole purpose was the
25 improvement of all of the elevators of the Plaza and it

1
2 involved the conversion of or installation of nine elevators
3 to upgrade and modernize and to automate -- would you like me
4 to go on and explain the whole aspect of it?

5 Q Yes.

6 A They had very, very poor service and the
7 people that bought the hotel decided that they had to upgrade
8 it to compete with the latest hotels. They gave us -- we
9 completed two of the cars, cars 11 and 12.

10 We're working on right now seven of the cars
11 and the cars in question are cars 5, 6, 7, and 8. Because of
12 the nature of the peculiar job those happen to be, they are
13 hydraulic manual elevators to be converted, that is the type
14 of work we have done many times before and of the four cars,
15 they must be done two at a time, at the same time; because of
16 the need to upgrade the cars by a certain period of time, we
17 also are converting one of three cars in the back.

18 So we have now three elevators out of operation,
19 two complete and in the front of the building, the four cars
20 that I'm referring to, cars 5, 6, 7, and 8. Of two of those
21 are shut down, we've been on them approximately four and a
22 half months.

23 There is a terrible pressure to finish those
24 cars by October 1st, because as of the present time the cars
25 -- the lack of cars and the diminution of service in that

1
2 building is creating a serious problem in traffic.

3 MR. SCHWARZ: Would you mark this as
4 Plaintiff's Exhibit 2 for identification?

5 THE COURT: What is that?

6 MR. SCHWARZ: It is a schematic of the elevators
7 showing the elevators by number and their location in
8 the building.

9 THE COURT: In evidence.

10 THE CLERK: Received, one diagram, in evidence
11 as Plaintiff's Exhibit 2.

12 THE COURT: Show it to counsel.

13 MR. SCHWARZ: Yes. Let the record show I'm
14 showing counsel Plaintiff's Exhibit 2.

15 Q Mr. Citrin, is Exhibit 2 a diagram of the
16 work which you have just described to the Court?

17 A Yes, it is.

18 Q On that diagram you will note that there are
19 elevators numbered 5, 6, 7 and 8?

20 A Yes.

21 Q Are those elevators presently being worked upon
22 by the individuals who are represented by Local 3?

23 A Yes, they are.

24 Q An- did there come a time when the individuals
25 who are working on those elevators stopped doing work on them?

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A Yes.

Q Would you please tell the Court the circumstances surrounding that cessation of work?

A On elevators No. 7 and 8, after about four and a half months in time when we reached approximately August, I think, Friday, August, and I don't remember the date, I think it was August 4th. I was notified by Mr. O'Hara of Local 3 that --

Q I notice you were pointing to someone. Is Mr. O'Hara present in court?

A I'm sorry, he's not present. Mr. O'Hara called me to say that we no longer could work on cars 7 and 8.

Q Who is Mr. O'Hara?

A Mr. O'Hara is the Assistant Business Manager of Local 3, IBEW.

Q Proceed.

A We could no longer work on car 7 and 8. He was going to instruct the men to stop working.

I told him that that wasn't right, that wasn't fair and I was in the middle of a very major job and we had a contract.

He said, "That's how it had to be," and he notified the men to stop work.

Q Did the men stop work?

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A Yes, they did.

Q And when did they resume work on that job?

A They resumed work approximately 11:00 o'clock yesterday.

Q As a result of an order of this Court?

A Yes, sir.

Q Was there any work done on elevators 7 and 8 which the men represented by Local 3 had not performed previously?

A None at all. We have done that job many a time before.

Q Were there any further discussions between you and Mr. O'Hara and/or any other representative of Local 3 concerning this matter?

A I'm sorry, at which period of time?

Q After the men stopped work?

A Well, I had gone to the job and told the men to work and the men would not work. The union said -- there were conversations with the men --

Q Did there come a time when you asked for arbitration of this matter and notified --

A Yes, sure.

Q The union of their contractual obligations in the field?

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2 A At the same time Mr. O'Hara told me -- our men
3 were going to be told not to work on cars 7 and 8, then we did,
4 confirming our verbal conversation I sent a telegram to
5 Mr. O'Hara stating we have a contract and that the procedure
6 in the contract called for any cessation of work would be to
7 file for grievance and go to arbitration. That's what I sent
8 him a telegram requesting.

9 MR. ROTHFELD: I move to strike the description
10 of the telegram, best evidence rule.

11 THE COURT: Do you have a copy of it?

12 MR. SCHWARZ: Is the telegram you sent
13 Exhibit 2 to your affidavit in support of the temporary
14 restraining order?

15 THE WITNESS: Yes, it is.

16 THE COURT: All right, it will be deemed in
17 evidence. We do not have to take it out of the file.

18 Q Was there any response to that telegram from
19 the union?

20 A None.

21 MR. SCHWARZ: Your Honor, I don't know whether
22 it is necessary to read the document into evidence.
23 It is very short and with your Honor's permission I
24 will.

25 The telegram reads: "From Mr. Thomas Van Ars

(phonetic) Local 3, IBEW 153 Jewel Avenue, Flushing,
New York, 11365.

"I have been informed that members of your union
employed by our company have been instructed by the
union to no longer perform work on elevators No. 5, 6,
7 and 8 at the Plaza Hotel. We consider this work
stoppage a violation of the no-strike provision of your
agreement. Your claim that this work is not within the
scope of work covered by our agreement is a matter
subject to arbitration.

"We demand that you immediately rescind any and
all instructions to your members to cease this work
and further demand that you submit this matter to
arbitration.

"We stand ready to select a board of
arbitration."

DIRECT EXAMINATION

BY MR. SCHWARZ (Cont.):

Q Mr. Citrin, in the event the members of
Local 3 do not continue their work on elevators 5, 6, 7, and 8,
what will result or what will be the result on your ability
to perform the work required by your contract with the Plaza
Hotel?

A Disastrous.

Q In what way?

A It's so upsetting, because we have already lost four days at the Plaza Hotel. People gave us this job based entirely upon our reputation for reliability and for being able to perform this type of work being we are one of the largest converters of elevators in New York City.

Our whole reputation is at stake because the Plaza cannot afford to have elevators out of operation. They are paying us overtime to complete this job. I will have to make up the overtime for the last four days. They're paying us sixteen hours of overtime a week so this job can be completed, the first two cars can be completed in October. I would say that if I cannot finish by October, it would be an absolute -- I can't describe it, it would be devastating to the integrity that we built since 1959 and we have built an excellent reputation for reliability and being conscientious.

(continued next page)

1 Q To what extent will Millar suffer financial
2 damage?

3 A I couldn't measure that. We would lose our
4 word, our word would be worthless. Dollar-wise, if the Plaza
5 Hotel wanted to hold me responsible for the time commitment in
6 our contract, it is incalculable what they could set, damage
7 or loss in the building, and they are aware of the problem,
8 but they are not fully aware of the extent that we are now in
9 this kind of proceeding.

10 I am frightened stiff that the Plaza Hotel --
11 I am vulnerable now, even with the three days we lost, and
12 there could be serious consequences from the Plaza.

13 MR. SCHWARZ: I have no further questions, your

14 Honor.

15 CROSS-EXAMINATION

16 BY MR. ROTHFELD:

17 Q Mr. Citrin, you just made reference in your
18 direct testimony to time commitment of your contract with the
19 Plaza Hotel; do you happen to have a copy of that contract
20 with you?

21 A I have some copies. I have copies of the
22 contracts, but I don't have copies of all the correspondence.
23 I'll be happy to bring you --

24 Q Sir, do you have in the courtroom any document
25

1
2 which sets forth the provision that time is of the essence
3 with respect to your completion of the modernization of
4 elevators in the Plaza Hotel on any specified date?

5 A No, I do not.

6 Q Do you remember whether or not the words "time
7 is of the essence," are set forth in any of the documents which
8 constitute your contract with the Plaza Hotel?

9 A Yes, I have in the office letters which state
10 that we will complete the job by a certain day. There is no
11 one contract, Mr. Rothfeld. There are three, and there is a
12 large file of various job meetings as this job has progressed.
13 There have been agreed-upon sort of scheduling decisions that
14 have taken place throughout.

15 Q Sir --

16 A I'm sorry, but I want to be responsive.

17 Q The response I am asking for is to my question
18 as to whether in your contract with the Plaza Hotel the words,
19 "time is of the essence," or their equivalent is set forth?

20 A No, sir.

21 But -- I'm sorry.

22 Q Now, your modernization began on or about
23 July 1, 1976; is that correct?

24 A Well, when you say modernization began, there
25 is a series of nine cars here. Which modernization are we

1
2 talking about?

3 Q Any of those nine cars in the hotel.

4 A No. We started work on car 11 in November
5 '74. I'm just referring to my notation.

6 Q You have been working, modernizing elevators,
7 since November, 1974?

8 A In the Plaza Hotel, modernization of elevators,
9 since 1974.

10 Q Between November '74 and August 1 of '76, has
11 the Plaza Hotel sent you any letters asking that you speed up
12 your work?

13 A Yes, they have.

14 Q Are any of them in the courtroom today?

15 A No, sir.

16 Q Are they in your office?

17 A Yes.

18 Q Did you show them to your attorney?

19 A I haven't shown him the file of the Plaza Hotel --

20 MR. SCHWARZ: Objection, your Honor.

21 THE COURT: On the ground?

22 MR. SCHWARZ: Privilege.

23 THE COURT: Sustained.

24 MR. ROTHFELD: All right.

25 Q Now, sir, since July 29th of 1976 when you

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2 received word from Local Union No. 3 that elevators 5, 6, 7,
3 and 8 would no longer be worked on by their members, have you
4 received a letter from the Plaza Hotel asking you to do some-
5 thing about that situation?

6 A Any letters? No, no letters.

7 Q Have you received any telegrams from the Plaza
8 Hotel telling you that time was of the essence with respect
9 to your completion of the work?

10 A No, sir.

11 Q Now, sir, is it correct you have approximately
12 185 elevator mechanics represented by Local Union No. 3 at work?

13 A That's correct.

14 Q And that two of these 185 employees were
15 involved in the refusal to continue work in those elevators?

16 A Not two, much more than two.

17 Q So, in your moving affidavit on paragraph 13,
18 you made reference to two employees named Robert Walker and
19 Dennis Chasson; are those the two employees, members of
20 Local 3, who were working on elevators 7 and 8 last week?

21 A They were two of others. Those were the two
22 at the time that I made the affidavit.

23 Q Now, sir, during the last three days that those
24 two employees ceased work on elevators 7 and 8, did you put
25 them to work on other elevators?

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A Did I put them to work on other elevators?

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Q That's right.

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A Yes, I did.

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Q And is it not a fact, sir, that at no time

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during this so-called work stoppage did any of your employees

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represented by Local Union No. 3 refuse to work for you?

8

A Nobody refused -- yes, they refused to work on

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those elevators. My election was to let them go home or find

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other work. I feel for my men, so I found other work thinking

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it was from day to day, but as it went into the third day, had

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it gone on I would have had to let those men go home. It

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isn't the men, it's the work that wasn't being --

14

Q I'm not asking what you would have done.

15

A I'm sorry.

16

Q You gave them other work to do?

17

A Yes, I did.

18

Q That is because you felt for them?

19

A You bet your life. I won't send a man home

20

because the union says --

21

Q You have people working on overtime, do you not?

22

A Yes, I have.

23

Q You have a backlog of elevator work to perform?

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A No, sir. I have not a backlog of elevator work.

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The whole issue is that there isn't that much elevator work

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2 around. The issue of overtime of the Plaza was because the
3 Plaza is insisting I finish by October and Mr. Rothfeld, the
4 reason, although I didn't get a letter from -- from the Plaza,
5 every Monday there's a job meeting and say the last two
6 Mondays I've had a total commitment to the Plaza -- the last
7 three Mondays, that I will be finished by October.

8 We are not nearly ready to be finished by
9 October.

10 Q Mr. Citrin, I ask you to respond to my questions
11 and not make speeches.

12 A I'm sorry.

13 Q Do you know whether during the summer, Robert
14 Walker took a vacation?

15 A Do I personally know? No, I don't.

16 Q Do you know whether Dennis Chasson took a vacation?

17 A No.

18 Q Is it not customary for your employees to take
19 a vacation during the summer?

20 MR. SCHWARZ: Objection, your Honor. I don't
21 see the relevance of the question.

22 THE COURT: I will allow it.

23 A Yes, they have their vacation period and of
24 course they take their vacation if --

25 Q Now, sir, at the Plaza Hotel prior to July 29,

cross

1976, when an employee went on vacation, did you not assign another employee represented by Local Union No. 3 to continue working on the elevators?

A I'm sorry. May I have that question again?

(Record read.)

A It could be. I'm not certain.

Q Now, sir, how long did it take when an employee, modernizing an elevator, went on vacation, for a colleague of his -- when he started work on that elevator, to become fully productive in performing that work?

A Each job is different. I would say that on the Plaza Hotel, if other people operate that end of the business, I'm not familiar with that vacation scheduling at the Plaza, but most certainly if there's a vacation due, we would take one of the othermen at the Plaza and say we happen to have another team working on one of the other cars, and I assure you the scheduling would be worked out that while they were working -- before they took a vacation there would be a familiarization of the work and our people -- we have a definite standardization of equipment. We have a technique of developing our mechanics and helpers so they have a familiarity at the building and that would probably enable them to take over within a relatively short period of time.

I'm trying to be responsive. A relatively short

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2 period of time, maybe by two or three weeks that they knew,
3 that they were on vacation, he would let the other mechanic
4 know what he was doing.

5 Q Sir, if I were a skilled elevator mechanic
6 represented by Local Union No. 3 and you put me now repairing
7 elevator 7, how long would it take before I did a productive
8 day's work?

9 A It could be -- if you were one of the most
10 skilled men in the area? You have never worked for Millar
11 Elevators and you've never been through our training program
12 and you've never been through our standardization program, you
13 could take as much as a month to understand what we were
14 doing.

15 Q Sir, is it your testimony that I could not
16 become productive on an elevator until I spent a month working
17 on that elevator?

18 THE COURT: Sustained.

19 MR. SCHWARZ: Thank you, your Honor.

20 Q Now, sir, if James O'Hara authorized you to send
21 another one of your employees to work repairing elevator 7,
22 how long would it take him before he were working productively
23 on elevator 7?

24 A He would never do that --

25 MR. SCHWARZ: Objection.

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2 THE COURT: Sustained.

3 Q Are you familiar with the skills of the
4 elevator mechanics who are represented by Local Union No. 1
5 of the elevator constructors?

6 A Yes, I am.

7 Q Is it your contention that they are equally
8 skilled, less skilled than or more skilled than the members
9 of Local Union No. 3 who performed elevator modernization
10 work?

11 MR. SCHWARZ: Objection, your Honor.

12 THE COURT: Overruled.

13 MR. SCHWARZ: Your Honor, may I --

14 THE COURT: I will hear it, if he knows.

15 A Generally, the skills of both unions have
16 overlapped for many years, they are the same. Specifically
17 given any individual day may be totally different.

18 Q Is it then the thrust of your testimony that the
19 skills of the members of Local 3 widely from the skills of
20 Local No. 1? They also vary widely?

21 A That's it.

22 MR. SCHWARZ: Objection.

23 THE COURT: He's answered it. I'll allow it.

24 Q The answer is yes?

25 A Absolutely.

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2 Q Now, sir, what is your testimony with respect
3 to how long it would take for a member of Local Union No. 1,
4 if placed to work on modernizing elevator 7 or 8 --

5 MR. SCHWARZ: Objection, your Honor.

6 THE COURT: Sustained.

7 MR. SCHWARZ: Also, your Honor --

8 THE COURT: Sustained.

9 Q Sir, let us address ourselves to elevators 5
10 and 6; is it not correct that the work on those two elevators,
11 modernizing them, has not yet commenced?

12 A That's correct. They are presently running on
13 a hydraulic manual.

14 Q Is it not correct, sir, that none of your
15 employees have learned the particular kinks that may be
16 required to learn in connection with modernization those two
17 elevators --

18 MR. SCHWARZ: Objection, your Honor.

19 THE COURT: He's answered it.

20 Is the answer yes?

21 THE WITNESS: I'm sorry, sir. No, your Honor.
22 Just the opposite. The man -- well, we estimate a
23 conversion and during that time --

24 MR. SCHWARZ: I object. Not only on the
25 basis of the fact that he has gone beyond the scope of

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2 direct examination, but also, Your Honor, on the fact
3 this is totally irrelevant. The contract is between
4 Local 3 and Millar.

5 THE COURT: I understand your position, but this
6 goes to the question of whether you are grievously harmed.
7 If these men are fungible grains of wheat and you can
8 move them around, there is no harm --

9 THE WITNESS: But --

10 MR. SCHWARZ: But they're not people employed
11 by Millar Elevator and the questions are going to the
12 skills and capabilities of Local 1 people.

13 THE COURT: I understand.

14 MR. SCHWARZ: Your Honor, a union does not own
15 work. It only functions as a representative of the
16 employees --

17 THE COURT: I understand. Move to the next
18 point.

19 Q Sir, in your telegram, sir, you demanded that
20 the union submit this dispute to arbitration; is that correct?

21 A I recall demanding that -- I don't remember the
22 words I used.

23 MR. SCHWARZ: Your Honor, I believe the
24 document speaks for itself.

25 Q I'll read them to you or part of them.

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2 MR. SCHWARZ: Your Honor, I object. I don't
3 believe there's any reason to read that.

4 THE COURT: Why are you arguing with this
5 witness?

6 MR. ROTHFELD: Very well, your Honor.

7 Q I ask you to read to yourself the last two
8 lines of your telegram.

9 THE COURT: What are you going to ask him?

10 MR. ROTHFELD: I am trying to elicit admissions.

11 THE COURT: There's no point in it.

12 MR. ROTHFELD: Very well, your Honor.

13 THE COURT: I thought this is going to take
14 five minutes. It took fifteen already.

15 Q Did you, Mr. Citrin, submit this matter to
16 arbitration?

17 A No, sir. Other than the telegram --

18 THE COURT: You said no?

19 THE WITNESS: No, sir.

20 THE COURT: Thank you.

21 Q Is it not a fact, sir, that this contract does
22 not provide for submission --

23 THE COURT: Let's move on.

24 MR. ROTHFELD: I'm almost finished, your Honor.

25 MR. SCHWARZ: I will object, your Honor.

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2 THE COURT: Go to the next question.

3 MR. ROTHFELD: I understand your Honor's
4 thinking. No further questions.

5 THE COURT: Thank you very much.

6 MR. COHEN: May I have leave to question?

7 THE COURT: No.

8 MR. COHEN: Did you rule that I cannot ask
9 questions?

10 THE COURT: I don't think it is necessary.
11 You are a silent partner at this point.

12 MR. SCHWARZ: Your Honor, we have no further
13 witnesses.

14 THE COURT: Does the Plaintiff rest?

15 MR. SCHWARZ: Yes, sir.

16 THE COURT: I think I'm going to have to deny
17 an order here in the grievance procedure. I take it
18 in the contract, Article 11, 12 and 15 are what you
19 are referring to and relying on?

20 MR. SCHWARZ: Yes, sir.

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22 (continued next page)
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2 THE COURT: 11 is the grievance procedure.
3 Article 11 clearly relates to grievances of employees.
4 It provides a detailed way of resolving grievances of
5 employees.

6 Article 11 is not applicable here because the
7 employees have no grievances. They are not complaining
8 about anything.

9 Article 12 is the basic arbitration provision.
10 It provides, "Any grievance arising out of a difficulty
11 or dispute as to the interpretation or application
12 of any provision of this agreement," here I emphasize
13 "which has not been satisfactorily settled through
14 the grievance procedure described herein and goes on
15 shall be subject to arbitration."

16 This is not a grievance procedure provided
17 herein. It is an entirely different kind of dispute.

18 Article 15 is dealing with the strikes and
19 lockouts provided in Subdivision B, "Any violation on
20 the part of the union official constitutes a breach
21 of this agreement." This may be a breach, but we have
22 here in the agreement, "on the part of any employee
23 shall constitute cause for disciplinary action which
24 may include discharge."

25 As I read the agreement, this is not an

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2 arbitrable dispute. It may well be a violation of an
3 agreement on behalf of the union official in which
4 case there is a possibility for a claim of damages
5 against the union and there may well be a basis to
6 discharge the employees involved because they arguably
7 violated the strike agreement. But, I don't see how
8 arbitration fits into this.

9 MR. SCHWARZ: This is the same question we face
10 in ABCO v. Local 787 and the Court in the Third
11 Circuit --

12 THE COURT: Do you have a copy of the agreement
13 in this case?

14 MR. SCHWARZ: No, I don't.

15 THE COURT: There's no point -- it's fruitless
16 to talk about it.

17 MR. SCHWARZ: But your Honor, the thrust of the
18 argument and the thrust of your jurisdiction given to
19 this Court by the Boyce Market case itself --

20 THE COURT: There is no question of jurisdiction.
21 It is a question of interpretation of an agreement.

22 MR. SCHWARZ: I'm not saying that. In the
23 Boyce Market case itself, the Boyce Market case -- the
24 question arose almost exactly like this case, where
25 the employer is seeking arbitration and there was a

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2 grievance procedure and the grievance procedure
3 related to employees' claims and the Court found that
4 if the dispute, if the dispute was one which was
5 subject to the grievance and arbitration procedure that --

6 THE COURT: Well, this is not.

7 MR. SCHWARZ: But your Honor, it is.

8 THE COURT: I disagree with you.

9 MR. SCHWARZ: Because if that isn't the case,
10 any union who would want to avoid arbitration and
11 follow a strike route instead, the only thing it has
12 to do is not submit a grievance. In that way it can
13 completely avoid that matter.

14 THE COURT: That is not the situation. If
15 there were a grievance by an employee, if it were the
16 type of case handled by grievance, they couldn't avoid
17 it. This apparently is an inter-union jurisdictional
18 dispute.

19 MR. SCHWARZ: No, sir, it is not an inter-
20 union jurisdictional dispute. The situation is very
21 dissimilar to this --

22 THE COURT: Doesn't a different union claim
23 jurisdiction over the work?

24 MR. SCHWARZ: Not with us. It makes a great
25 deal of difference. In Carey v. Westinghouse, for

1
2 example, and in the telegraph case in dealing with
3 Local 6 and in the Powers case decided by the Second
4 Circuit, there you had a case of jurisdictional dispute.
5 An employee who had two unions doing different work
6 within his employ.

7 THE COURT: You can have a jurisdictional
8 dispute. I get them all the time, Mr. Kaynard brings
9 them in --

10 MR. SCHWARZ: But not the Boyce Market case --

11 THE COURT: It involves jurisdictional problems
12 with the NLRB, they get involved. Here there is
13 apparently what would normally be a jurisdictional
14 dispute which would result in picketing and resulting
15 in the employer being caught between two unions. The
16 union in accordance with the process that is generally
17 encouraged by the courts have worked out a method of
18 resolving the dispute by themselves.

19 They have resolved it and I said one union can't
20 work and the other can --

21 MR. SCHWARZ: That isn't the problem. The
22 problem generated here is that if two unions, Local 3
23 and any other union or any other person were to decide
24 that we were just going to submit a case to some forum
25 in which we are going to -- we are no longer going to

1 contract to perform certain work and then claim that
2 that decision violates the contractual obligation with
3 the employer --

4 THE COURT: I don't think they can. I think
5 you clearly have, I'm not deciding the case, there may
6 be other points to it, but you clearly have a cause of
7 action against the union for violating the no-strike
8 agreement. You have a cause of action -- not a cause
9 of action, but you have a reason to discipline the
10 employees who refuse to work. You can fire them.

11 MR. SCHWARZ: That is so. We certainly could
12 have discharged an employee when we assigned them to
13 perform this work. There is no doubt about it.

14 THE COURT: You can bring a suit against the
15 union for damages.

16 MR. SCHWARZ: We couldn't bring a suit against
17 the union. If we did, you would find very, very
18 quickly, probably over in the Southern District in
19 Foley Square under the Drake and under the Packing
20 case the union would claim that the claim was subject
21 to arbitration and was arguably subject to arbitration
22 and there we would have to bring our claim for damages
23 before the Arbitrator and be stayed for suing the
24 union for damages.

25 THE COURT: I don't think there are such

1 arbitration clauses here. There is none.

2
3 MR. SCHWARZ: But, your Honor, in the Carey v.
4 Westinghouse case, the Supreme Court clearly said if
5 there is a jurisdictional dispute and the claim is
6 subject to arbitration under a collective bargaining
7 agreement --

8 THE COURT: I don't believe it is. I think it
9 is a very narrowly drawn arbitration provision. It is
10 an extremely narrow arbitration provision. I didn't
11 draft it.

12 The arbitration provision clearly refers, as I
13 read it, to the grievance by employees as against
14 employers.

15 Now, I may be wrong, I'm just simply not going
16 to grant an injunction.

17 MR. SCHWARZ: Your Honor, it is our position
18 if the matter is subject to arbitration and collective
19 bargaining agreements in that case, the union, at the
20 employer's request or at the union -- if the union
21 wants the employer, there is a prerequisite of
22 arbitration as was the case in the elevator
23 constructor's No. 1 case, which was decided by the
24 Second Circuit and which was cited in our brief.

25 Then the employer is entitled to arbitration --

1
2 THE COURT: I understand your point and it is
3 a very good point and you may well be right.

4 MR. SCHWARZ: As a matter of fact, your Honor --

5 THE COURT: Excuse me. You are not convincing me
6 on the agreement.

7 Now, what I suggest is that this hearing
8 constitute the full trial in the case. I'm not issuing
9 an order finally deciding the case on this hearing, but
10 dismissing it for the reasons I have stated, and you
11 take it to the Court of Appeals in the Eastern District
12 and get a stay from them. Otherwise, you will be
13 dragging it around and you will be in trouble.

14 MR. SCHWARZ: Your Honor, will you grant a stay
15 pending the appeal?

16 THE COURT: Pending the appeal? I will grant
17 the stay until your application to the Court of Appeals
18 for a stay. Is that satisfactory to both sides?
19 I will issue a final order dismissing.

20 MR. COHEN: That is fine. I'm not sure -- you
21 are going to keep the injunction in effect?

22 MR. ROTHFELD: You can't --

23 THE COURT: In effect the temporary restraining
24 order will be in effect until next Tuesday or whatever
25 the next motion day is.

1
2 MR. ROTHFELD: If your Honor pleases, the
3 temporary restraining order expires on Friday.

4 THE COURT: I know. I can continue it.

5 MR. SCHWARZ: Once the hearing has taken place
6 you can continue the order.

7 THE COURT: And I will discontinue it so you can
8 make an application to the Court of Appeals. I think
9 that is the reason for it.

10 MR. ROTHFELD: Well, if your Honor pleases, you
11 have already announced --

12 THE COURT: Well, I could be wrong and I
13 recognize my fallibility.

14 MR. ROTHFELD: Very well, your Honor.

15 Your Honor, assuming the proper preparation of
16 papers, the temporary restraining order is in effect
17 until Tuesday?

18 THE COURT: That is the next motion day?

19 MR. SCHWARZ: I believe it is, your Honor.

20 THE COURT: I don't know the summer situation.

21 MR. SCHWARZ: Do you order that it be the next
22 motion day from today?

23 THE COURT: Until next motion day.

24 MR. SCHWARZ: Your Honor, my understanding is
25 you are dismissing the motion for injunction. You are

1
2 not dismissing the entire case?

3 THE COURT: That's what I suggested, that I do
4 dismiss the whole thing and then you can take it up with
5 the Court of Appeals.

6 MR. SCHWARZ: I understand, your Honor.

7 THE COURT: What is the point of dragging it
8 out on procedural grounds? You can take up all issues.

9 MR. SCHWARZ: Fine, your Honor.

10 THE COURT: Now what about an order because I
11 am not going to be here tomorrow? Do you want an order
12 signed?

13 MR. SCHWARZ: Your Honor could enter your order
14 on the record.

15 THE COURT: I will so enter it. Give me a form.

16 MR. COHEN: For the record, can I object to the
17 application and granting of the stay?

18 THE COURT: Yes, I understand.

19 (Pause)

20 MR. COHEN: Excuse me, your Honor, can I
21 interrupt? Assuming a Boyce Market case, a sine qua non
22 of any injunction --

23 THE COURT: May I just finish the order?

24 MR. COHEN: I am sorry, your Honor.

25 (Short pause)

1
2 THE COURT: Yes, I'm sorry.

3 MR. COHEN: I just can't understand. It seems
4 inherently inconsistent. Boyce Market case says if you
5 maintain arbitration and only if you find that you can
6 enter an injunction. Otherwise there can be no
7 injunction. You have effectively issued an injunction
8 in the face of that and there is just nothing more basic.
9 We should go back to the status quo, put the parties
10 where they started --

11 THE COURT: You cannot, because there has been
12 a temporary restraining order issued in the case.

13 MR. COHEN: But your finding says that improper
14 arbitration --

15 THE COURT: If it came to me de novo I would
16 have denied it myself, the temporary restraining order
17 and done nothing on the case.. Did not. Another judge
18 of this court thought there was sufficient basis for
19 an injunction and to grant a temporary restraining
20 order. I disagreed with him.

21 I may well be wrong, but under those circum-
22 stances I think I should leave it status quo as
23 arranged by that judge.

24 MR. COHEN: That judge didn't have this hearing.
25 I think his --

1
2 THE COURT: I wasn't there.

3 MR. COHEN: It was an ex parte proceeding --

4 THE COURT: As I understand there was an
5 attorney from Local 1 present -- Local 3?

6 MR. COHEN: I'm sorry.

7 THE COURT: It wasn't ex parte. It's not the
8 practice of this Court.

9 MR. COHEN: You will find that the Judge who
10 signed the original order did not even find that there
11 was an arbitrable dispute. It's not an order and I
12 think that the original temporary restraining order is
13 defective. Boyce Market case says you must find that --

14 THE COURT: I gave you the opportunity to go
15 back to the Judge and have him vacate the temporary
16 restraining order. You did not want to. That is why
17 we held a hearing.

18 MR. COHEN: I don't know why, you know, the
19 other judge did something in an emergency situation.
20 It is now your case. I think he would be upset that
21 you overruled or found something different --

22 THE COURT: I'm sure he will not be upset, no
23 more than I would be upset if the Court of Appeals
24 overruled me. I couldn't care less.

25 MR. COHEN: It is now your case and you have

1
2 decided that it is arbitrable. You are overruling a
3 judge, you did not speak to that issue. In fact, his
4 order doesn't. The position you put me in, I have to
5 appeal from the original granting of it and in a sense
6 I won here. It puts me in a unique position. We are
7 the ones that are losing work.

8 MR. SCHWARZ: Your Local 1 isn't losing work.
9 Local 1 is not in the field to work. You are not
10 recognized as a bargaining agent.

11 THE COURT: Temporary restraining order
12 expires and if nothing is done, that is the end of it.
13 It's only if the Court of Appeals does something and
14 obviously Plaintiffs are going to have to convince
15 them to do something. I think you are unnecessarily
16 exercised --

17 MR. COHEN: The dispute started four months
18 ago and we should have had the work four months ago.

19 MR. SCHWARZ: They have not shown any right to
20 the work.

21 THE COURT: Gentlemen, the case is over.

22 MR. SCHWARZ: Your Honor, one question: Would
23 you please direct as to how the order, which you have
24 just endorsed, should be --

25 MR. ROTHFELD: Our order.

1
2 MR. SCHWARZ: Excuse me.

3 THE COURT: Yes?

4 MR. SCHWARZ: It should be served upon the
5 union?

6 THE COURT: It is served on the union. Who is
7 here from the Union?

8 MR. ROTHFELD: We are here.

9 THE COURT: Would you see that it is enforced,
10 please?

11 MR. ROTHFELD: Until next motion date.

12 MR. SCHWARZ: Thank you.

13 THE COURT: Good night.

14 (Whereupon, the proceedings were concluded.)
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① Service of two (2) copies of
the within *Appendix* is hereby admitted this
19th day of August, 1976

Harkovitz & Glonstein
Attorney for

② Service of two (2) copies of
the within *Appendix* is hereby admitted this
19th day of August, 1976

Wynne & Glonstein
Attorney for